No. 12-70518

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESISTING ENVIRONMENTAL DESTRUCTION ON INDIGENOUS LANDS (REDOIL), ALASKA WILDERNESS LEAGUE, CENTER FOR BIOLOGICAL DIVERSITY, NATURAL RESOURCES DEFENSE COUNCIL, NORTHERN ALASKA ENVIRONMENTAL CENTER, OCEANA, PACIFIC ENVIRONMENT, SIERRA CLUB, and THE WILDERNESS SOCIETY

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 10,

Respondent,

SHELL GULF OF MEXICO INC. and SHELL OFFSHORE INC.,

Intervenors-Respondents.

RESPONDENT'S ANSWER BRIEF

PETITION FOR REVIEW OF A DECISION OF THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Dated: May 14, 2012

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

RULES

REGULATIONS

FEDERAL REGISTERS

LIST OF ABBREVIATIONS

BACT	Best Available Control Technology
CAA	Clean Air Act
EAB	Environmental Appeals Board
EPA	United States Environmental Protection Agency
NAAQS	National Ambient Air Quality Standards
OCS	Outer Continental Shelf
OCSLA	Outer Continental Shelf Lands Act
OCS/PSD	Outer Continental Shelf/Prevention of Significant Deterioration
PSD	Prevention of Significant Deterioration
PTE	Potential to Emit
tpy	tons per year

JURISDICTIONAL STATEMENT

Respondent United States Environmental Protection Agency ("EPA") concurs in the Jurisdictional Statement set forth in Petitioners' Opening Brief ("Pet. Br.") at 2-3.

ISSUES PRESENTED

1. Whether EPA acted arbitrarily, capriciously, or not in accordance with law in issuing two Clean Air Act Outer Continental Shelf/Prevention of Significant Deterioration permits for resource exploration on the Outer Continental Shelf off the northern coast of Alaska pursuant to Clean Air Act Section 328 without requiring that vessels supporting the drill ship *Discoverer* control their air emissions by use of the "best available control technology."

2. Whether EPA acted arbitrarily, capriciously, or not in accordance with law when it interpreted its regulatory definition of ambient air, which does not include portions of the atmosphere inaccessible to the general public, in a manner that excludes the area surrounding the drill ship *Discoverer* to which members of the public are denied access by a safety zone established by the United States Coast Guard and by Shell's public access control program.

STATUTES AND REGULATIONS

Except for the statutes and regulations included in the Addendum bound with this brief, all applicable statutes and regulations are contained in the Addendum bound with Petitioners' Opening Brief.

STATEMENT OF THE CASE

I. INTRODUCTION

Petitioners challenge EPA's issuance of two permits under the Clean Air Act's Outer Continental Shelf/Prevention of Significant Deterioration ("OCS/PSD") program to Shell Gulf of Mexico, Inc., and Shell Offshore, Inc. (collectively "Shell"). The two permits authorize Shell, subject to the terms and conditions of the permits, to construct and operate a drill ship, the *Discoverer*, and its air emissions units, for the purpose of oil exploration in the Chukchi and Beaufort Seas off the North Slope of Alaska.

The permits were issued pursuant to section 328 of the Clean Air Act, 42 U.S.C. § 7627, which governs air pollution permits on the Outer Continental Shelf. The statute and associated regulations require that "Outer Continental Shelf sources," such as the *Discoverer*, comply with Clean Air Act's Prevention of Significant Deterioration ("PSD") program, 42 U.S.C. §§ 7470-7492. Congress enacted the PSD program to protect public health and welfare from adverse effects

of air pollution in areas currently meeting ambient air quality standards while also insuring that economic growth will occur in a manner consistent with the preservation of existing clean air resources.

One requirement of the PSD program is that major stationary sources employ the "best available control technology" ("BACT"). In this case, Petitioners claim that EPA should have imposed BACT restrictions not only on the *Discoverer* drill ship and vessels when attached to the drill ship, but also on the marine vessels supporting the drill ship, such as icebreakers and oil spill response ships (the "Associated Fleet"). As shown below, EPA correctly interpreted and applied the relevant statutes and regulations in concluding that BACT was not required for the Associated Fleet, because these vessels are not stationary sources.

In addition, EPA evaluated the effect of emissions to the "ambient air" in order to determine whether proposed emissions resulting from the permits would violate the National Ambient Air Quality Standards ("NAAQS") or unacceptably lower the quality of air in regions already in attainment of the NAAQS. Petitioners challenge EPA's approval in the permits of a 500-meter radius boundary around the *Discoverer* drill ship for measuring ambient air. We demonstrate that the ambient air boundary included in the permits was lawful and appropriate.

II. STATUTORY BACKGROUND

A. The Clean Air Act Generally

The Clean Air Act ("CAA" or the "Act"), 42 U.S.C. §§ 7401-7671q, establishes a comprehensive program for controlling and improving the nation's air quality through a system of shared federal and state responsibility. A central feature of that program is the NAAQS, which are nationally applicable standards set by EPA establishing permissible concentrations for a small class of common (or "criteria") air pollutants, such as nitrogen dioxide and ozone. 42 U.S.C. §§ 7408-09; *see* 40 C.F.R. Part 50.

B. The Prevention of Significant Deterioration Program

Congress adopted the PSD program as part of the 1977 amendments to the Act to prevent significant deterioration of air quality in areas with relatively high air quality. The PSD program applies to areas of the country that have been formally designated by EPA either as in "attainment" with NAAQS, *i.e.*, areas attaining the level of public health protection required by the NAAQS, or as "unclassifiable" because of lack of sufficient data to determine compliance or noncompliance with the NAAQS. *See* 42 U.S.C. § 7471.

The PSD provisions seek to fulfill sometimes conflicting goals. Congress declared as one of its purposes in adopting the PSD program the goal of protecting public health and welfare from adverse effects of air pollution, with an emphasis

on preserving the air quality in national parks, scenic areas, and other areas of special value. 42 U.S.C. § 7470(1) & (2). Congress also sought through the PSD program "to insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources." *Id*. § 7470(3).

Under the PSD program, a party may not commence the construction of a facility that will emit air pollution in excess of certain thresholds set under the Act without a permit (a "PSD permit") that satisfies certain statutory criteria to prevent significant deterioration of the air quality in the area where the facility will be located. 42 U.S.C. §§ 7475(a)(1), 7479(1). In order to obtain a PSD permit, an applicant must demonstrate that the facility "will not cause, or contribute to, air pollution in excess of any . . . [NAAQS] in any air quality control region." 42 U.S.C. § 7475(a)(3); *see also* 40 C.F.R. § 52.21(k). The applicant also must show that the facility will not cause or contribute to a violation of the established PSD "increment" – *i.e.*, the maximum allowable increase in ambient concentrations – for each pollutant. 42 U.S.C. § 7475 (a)(3). EPA's PSD regulations require the permit applicant to submit an analysis of the impact of the proposed source's emissions on air quality, generally based on a combination of monitoring and sophisticated air quality modeling. *See* 40 C.F.R. § 52.21(l)-(m).

The other primary requirement for obtaining a PSD permit is that "the proposed facility is subject to the best available control technology ["BACT"] for

each pollutant subject to regulation under this chapter" that it would have the potential to emit in significant amounts. CAA Section 165(a)(4), 42 U.S.C. § 7475(a)(4); *see also* 40 C.F.R. § 52.21(j). BACT is defined in the PSD statute as

> . . . an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this chapter emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. * * *

CAA section 169(3), 42 U.S.C. § 7479(3).[1] The technology-based BACT mandate and the demonstration of compliance with air quality standards are distinct requirements governing issuance of PSD permits.

C. Regulation of Outer Continental Shelf Activities and Relation to Prevention of Significant Deterioration Program

In 1990, Congress amended the Clean Air Act to grant EPA the authority to regulate air pollution from Outer Continental Shelf ("OCS") activities. CAA

[1] A slightly different definition of BACT is set forth in the PSD regulations. It essentially repeats the initial portion of the statutory definition, but also states that if EPA determines that "technological or economic limitations on the application of measurement technology to a particular emissions unit would make the imposition of an emissions standard infeasible," then "a design, equipment, work practice, operational standard, or combination thereof" may be used to satisfy the BACT requirement. 40 C.F.R. § 52.21(b)(12).

section 328, 42 U.S.C. § 7627. Congress authorized EPA to establish requirements to control air pollution from Outer Continental Shelf sources located off-shore of the States along the Pacific, Arctic, and Atlantic oceans and certain areas of the Gulf Coast to attain and maintain ambient air quality standards and to comply with the PSD program. *Id*. § 7627(a).

Section 328 defines "Outer Continental Shelf source" or "OCS source" as "any equipment, activity, or facility which – (i) emits or has the potential to emit any air pollutant, (ii) is regulated or authorized under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.], and (iii) is located on the Outer Continental Shelf or in or on waters above the Outer Continental Shelf." CAA Section 328(a)(4)(C), 42 U.S.C. § 7627(a)(4)(C). The activities include "platform and drill ship exploration." *Id*. Relevant for this petition for review is the further provision stating that "[f]or purposes of this subsection, emissions from any vessel servicing or associated with an OCS source, including emissions while at the OCS source or en route to or from the OCS source within 25 miles of the OCS source, shall be considered direct emissions from the OCS source." *Id*.

In 1991, EPA proposed "Outer Continental Shelf Air Regulations," 56 Fed. Reg. 63,774 (Dec. 5, 1991), which were finalized the following year. 57 Fed. Reg. 40,792 (Sept. 4, 1992). The resulting regulations are codified at 40 C.F.R. Part 55. The regulations expanded upon the statutory definition of "OCS source":

> OCS source means any equipment, activity, or facility which:
>
> (1) Emits or has the potential to emit any air pollutant;
>
> (2) Is regulated or authorized under the Outer Continental Shelf Lands Act ("OCSLA") (43 U.S.C. § 1331 *et seq*.); and
>
> (3) Is located on the OCS or in or on waters above the OCS.
>
> This definition shall include vessels only when they are:
>
> (1) Permanently or temporarily attached to the seabed and erected thereon and used for the purpose of exploring, developing or producing resources therefrom, within the meaning of [43 U.S.C. § 1333(a)(1)]; or
>
> (2) Physically attached to an OCS facility, in which case only the stationary source aspects of the vessels will be regulated.

40 C.F.R. § 55.2.

The regulations also include a definition of "potential emissions" as "the maximum emissions of a pollutant from an OCS source operating at its design capacity." *Id*. In addition, the definition states that "[p]ursuant to section 328 of the Act, emissions from vessels servicing or associated with an OCS source shall be considered direct emissions from such a source while at the source, and while enroute to or from the source when within 25 miles of the source, and shall be included in the 'potential to emit' for an OCS source." *Id*.

In the preamble to the Final Rule, EPA noted that section 328(a)(4)(C)(ii) defines an OCS source as one that is, among other things, regulated or authorized under the Outer Continental Shelf Lands Act ("OCSLA"). 57 Fed. Reg. at 40,793.

The OCSLA provided that the Department of the Interior (which administered the OCSLA) was authorized to regulate installations and devices "permanently or temporarily attached to the seabed," which might be erected there for the purpose of "exploring" for (among other things) resources from the seabed. 43 U.S.C. § 1333(a)(1). Thus, EPA's regulation included vessels in the definition of OCS source only when they are permanently or temporarily attached to the seabed, erected on the seabed, and being used for the purpose of exploring, developing, or producing resources therefrom. 40 C.F.R. § 55.2. This would include, for example, drill ships on the OCS. 57 Fed. Reg. at 40,793. In addition, under the regulations, "when a vessel is physically attached to an OCS facility, it will be considered a part of that facility and regulated as such." *Id*.

Congress in section 328(a)(1) required that OCS sources "attain and maintain Federal and State ambient air quality standards" and comply with the PSD provisions of the Clean Air Act. The requirements of the PSD program are applicable to "major emitting facilit[ies]." CAA section 165(a), 42 U.S.C. § 7475(a). That term means "stationary sources of air pollutants" which emit, or have the "potential to emit" either 100 tons per year ("tpy") or 250 tpy or more of any air pollutant. CAA Section 169(1), 42 U.S.C. § 7479(1); 40 C.F.R. § 52.21(b)(1)(i). It is particularly important to note that the PSD program applies to "stationary" facilities, as opposed to "mobile sources" (such as automobiles),

which are regulated pursuant to Subchapter II of the Clean Air Act, 42 U.S.C. §§ 7521-7590. "Stationary source" is defined in the PSD regulations to mean "any building, structure, facility, or installation which emits or may emit a regulated [New Source Review] pollutant."[2] 40 C.F.R. § 52.21(b)(5).

As indicated above, whether a stationary source is subject in the ordinary course to PSD requirements depends on the source's potential emissions. CAA Section 169(1), 42 U.S.C. § 7479(1). The "potential to emit" ("PTE") is defined in the PSD regulations as "the maximum capacity of a stationary source to emit a pollutant under its physical and operational design." 40 C.F.R. § 52.21(b)(4). However, "secondary emissions" do not count towards a stationary source's PTE. *Id*. "Secondary emissions" are those "which would occur as a result of the

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[2] The term "stationary source" is also defined as "generally any source of an air pollutant *except those emissions* resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 7550 of this title." CAA section 302(z), 42 U.S.C. § 7602(z) (emphasis supplied). "Nonroad engine," in turn, means "an internal combustion engine (including the fuel system) that is not used in a motor vehicle," with some exceptions, and a "nonroad vehicle" is one that is powered by a nonroad engine and is not a motor vehicle." Sections 216(10), (11), 42 U.S.C. § 7550(10), (11). Thus, vessels are excluded from the definition of "stationary source" when they contain an internal combustion engine and are not vehicles. CAA Section 302(z) was adopted as part of the 1990 Amendments to the Clean Air Act, as was section 328. As used in this brief ,"vessels" shall mean sources that are propelled by an internal combustion engine and are not motor vehicles.

construction or operation of a major secondary source . . . but do not come from the major stationary source . . . itself." 40 C.F.R. § 52.21(b)(18). Secondary emissions "do not include any emissions which come directly from a mobile source, such as emissions from . . . a vessel." *Id*.

D. EPA Permitting Procedures

EPA's procedures for reviewing OCS/PSD permit applications are contained in 40 C.F.R. Part 124. *See* 40 C.F.R. § 55.6(a)(3). Under the Act and Part 124, EPA must provide the public with an opportunity to submit written and oral comments on proposed OCS/PSD permits and denials during the permit review process. *See* 42 U.S.C. § 7475(a)(2); 40 C.F.R. § 124.10-12. After EPA reviews and responds to public comments, the Regional Administrator (or his or her authorized delegate) for the EPA Region responsible for reviewing the permit application must take action by granting or denying the permit application. *See* 40 C.F.R. §§ 124.15, 124.17, 124.18.

EPA established the Environmental Appeals Board ("EAB") in 1992 to hear appeals of permit and penalty decisions. 57 Fed. Reg. 5,320 (February 13, 1992). Pursuant to 40 C.F.R. § 124.2, "[t]he Administrator delegates authority to the Environmental Appeals Board to issue final decisions in . . . [PSD] . . . permit appeals filed under this subpart." Within 30 days after a final PSD permit is issued, "any person who filed comments on that draft permit or participated in the

public hearing may petition the [EAB] to review any condition of the permit decision." 40 C.F.R. § 124.19(a).

If a final OCS/PSD permit decision is appealed to the EAB, that permit decision becomes final agency action for the purposes of judicial review after the conclusion of the appeal to the EAB or remand proceedings following such an appeal. *See* 40 C.F.R. § 124.19(f). Filing a petition with the EAB is a prerequisite to seeking judicial review. *Id*., § 124.19(e).

III. FACTUAL BACKGROUND

In December 2008, Shell submitted to EPA Region 10 an application for an OCS/PSD permit to construct and operate a drill ship, the *Discoverer*, for the purpose of oil exploration in the Chukchi Sea off the North Slope of Alaska. I-SER000001. In May 2009, Shell applied for a similar OCS/PSD permit to construct and operate the same drill ship in the Beaufort Sea off the North Slope. I-SER000043. The two permit applications were considered together and subsequent administrative proceedings addressed the terms and conditions of both permits.

EPA Region 10 issued an initial draft permit and an accompanying statement of basis for Shell's proposed operations in the Chukchi Sea. I-SER000048, I-SER000098. EPA published notice of the draft permit for operations in the Chukchi Sea and solicited public comments between August 20, 2009, and October

20, 2009. I-SER000110. After reviewing the public comments, EPA Region 10 proposed a modified draft permit and solicited additional public comments between January 8, 2010, and February 17, 2010. I-SER000112. The Petitioners in this case submitted comments during both the public comment periods. I-SER000116, I-SER000140. Region 10 issued a final permit along with a response to the public comments on March 31, 2010. II-SER000176, III-ER-494.

Region 10 proposed a draft permit and statement of basis for the OCS/PSD permit application for Beaufort Sea operations on February 17, 2010. II-SER000238, II-SER000323. EPA solicited public comments through March 22, 2010. Petitioners submitted comments. II-SER000331. EPA Region 10 issued the final permit along with a response to comments document on April 9, 2010. II-SER000368, III-ER-487.

Three groups filed petitions requesting the EAB to review both the Chukchi and Beaufort permits. On December 30, 2010, the EAB issued an "Order Denying Review in Part and Remanding Permits," *In re Shell Gulf of Mexico, Inc.*, OCS Permit No. R10 OCS/PSD-AK-09-01, OCS Appeal Nos. 10-01 through 10-04 ("EAB I"); II-ER-262. In the EAB I decision, the Board upheld EPA's decision not to require PSD BACT restrictions on the emissions of the Associated Fleet vessels that service the "OCS source" (the drill ship *Discoverer* being the OCS source), but remanded the permits to EPA Region 10 on two other grounds. In

light of the remand, the Board did not rule on a number of other grounds for appeal asserted by various petitioners. Upon request of EPA Region 10 and Shell, the EAB issued another opinion on March 14, 2011, in which it decided four additional issues in order to facilitate reconsideration of the permits by EPA on remand. *Id.*, "Order on Four Additional Issues," (March 14, 2011) ("EAB II"); II-SER000376.

After remand, EPA Region 10 reissued the permits. I-ER-3, I-ER-103. The permits were again appealed to the EAB. On January 12, 2012, the Board issued its "Order Denying Review," which denied seven asserted grounds for appeal. Included among those grounds was an argument that EPA improperly allowed a 500-meter radius ambient air boundary around the *Discoverer*, which is the second of the two issues asserted by Petitioners in this petition for review. *In re Shell Gulf of Mexico, Inc. & Shell Offshore, Inc.*, "Order Denying Review," OCS Permits No. R10 OCS/PSD-AK-09-01 & R10 OCS/PSD-AK-10-01 OCS Appeal Nos. 11-02, 11-03, 11-04, and 11-08 (Jan. 12, 2012) ("EAB III"); II-ER-184.

SUMMARY OF ARGUMENT

The Clean Air Act requires that OCS sources, which are defined to include sources that are permanently or temporarily attached to the seabed, such as the exploration drill ship *Discoverer* here, are subject to PSD requirements, including BACT. CAA section 328, 42 U.S.C. § 7627. The statute draws a distinction

between an OCS source and the vessels that support the OCS source but are not attached to it. The Environmental Appeals Board correctly found that the statute is ambiguous as to whether the vessels of the support fleet are subject to the PSD BACT requirement. EPA's interpretation of the statute, determining that the support vessels are not subject to BACT, is a permissible interpretation of the statutory requirements. That interpretation is consistent with the underlying requirements for the application of PSD, EPA's regulations, and the fundamental distinction in the Clean Air Act between treatment of stationary sources (which are subject to PSD and BACT), and mobile sources, such as vessels.

EPA also reasonably interpreted its regulatory definition of "ambient air" to exclude areas around the *Discoverer* to which the general public is denied access by a United States Coast Guard ("Coast Guard") safety zone and by Shell's public access control program. EPA evaluates air emissions to the "ambient air" for the purpose of determining a source's compliance with NAAQS and PSD increments. Its regulations define "ambient air" as the portion of the atmosphere accessible to the general public. EPA determines the boundary of the "ambient air" on a case-by-case basis in individual permitting actions. With respect to emissions from sources on land, EPA interprets its regulatory definition to allow an exemption for publicly inaccessible areas surrounding the source in situations when the underlying land is owned or controlled by the source and public access is

precluded by a physical barrier. In the case of sources located over water, EPA adapts this approach and reasonably considers whether analogous factors preclude the public from entering an area surrounding the source. EPA followed this latter approach in drafting the Shell permits. The permits do not allow drill ship operations unless the *Discoverer* is subject to a safety zone established by the Coast Guard that prohibits the public from entering an area within at least 500 meters of the *Discoverer* and Shell takes further steps to preclude public access. EPA's use of permit conditions to establish the ambient air boundary was neither arbitrary nor capricious and should be upheld.

ARGUMENT

I. STANDARD OF REVIEW

This Court's review of both issues in this case is governed by the deferential standard set forth in the Administrative Procedure Act, 5 U.S.C. §§ 701-706. EPA's action is valid unless it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). This standard "is a narrow one," under which the Court is not "to substitute its judgment for that of the agency." *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971). Rather, the Court must ensure that the decision was based upon relevant factors and not a "clear error of judgment." *Id.*; *NRDC, Inc. v. EPA*, 966 F.2d 1292, 1297 (9th Cir. 1992).

Judicial deference to an agency's decision also extends to an agency's interpretation of a statute it administers. *United States v. Mead Corp.*, 533 U.S. 218, 227-31 (2001); *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 842-45 (1984). Under *Chevron*, if Congress has "directly spoken to the precise question at issue," that intent must be given effect. *Chevron*, 467 U.S. at 842-43. However, "if the statute is silent or ambiguous with respect to the specific issue, the question for the Court is whether the agency's answer is based on a permissible construction of the statute." *Id.* at 843; *NRDC v. EPA*, 966 F.2d at 1297. To uphold EPA's interpretation of the Act, the court need not find that EPA's interpretation is the only permissible construction that EPA might have adopted, but only that EPA's interpretation is reasonable. *Chemical Mfrs. Ass'n v. NRDC, Inc.*, 470 U.S. 116, 125 (1985); *NRDC v. EPA*, 966 F.2d at 1297. When the interpretation involves reconciling conflicting policies committed by the statute to an agency's expertise, deference is particularly appropriate. *Chevron*, 467 U.S. at 844.

The statutory interpretations articulated in the EAB's decisions are entitled to *Chevron* deference. Such deference is warranted where an agency acts pursuant to an express or implicit delegation of authority from Congress to address an ambiguity or fill a space in the statute. *Mead*, 533 U.S. at 229. A good indication of delegation warranting *Chevron* deference is the process of "rulemaking or adjudication that produces regulations or rulings for which deference is claimed."

Id. at 229-30; *see The Wilderness Society v. U.S. Fish & Wildlife Serv.*, 353 F.3d 1051, 1067 (9th Cir. 2003) (*Chevron* deference is appropriate if the agency interpretation will have the "force of law generally for others in similar circumstances."). Congress granted to the EPA Administrator the rulemaking and permitting authority to govern air pollution from OCS activities. 42 U.S.C. § 7627. The Administrator has delegated her authorities relevant to this case to the EAB, and EAB decisions constitute the type of adjudication that carries the force of law and warrants deference. *See In re Lyon County Landfill, Lynd, Mn.*, 406 F.3d 981, 984 (8th Cir. 2005) (EAB decisions are formal adjudications consistent with the Administrative Procedure Act and due *Chevron* deference); *Sultan Chemists, Inc. v. EPA*, 281 F.3d 73, 79 (3d Cir. 2002) (EAB proceeding is a formal adjudication and its interpretations carry the force of law); *Piney Run Preservation Ass'n v. Cnty. Com'rs of Carroll Cnty., Md.*, 268 F.3d 255, 267-268 (4th Cir. 2001) (EAB decision in prior, unrelated matter that articulated reasonable statutory interpretation is entitled to *Chevron* deference).

Although this Court has not expressly addressed the level of deference owed to a statutory interpretation offered by the EAB, it has accorded *Chevron* deference to the statutory interpretations provided by analogous agency boards or department heads when reviewing similar administrative appeals. For example, this Court accorded *Chevron* deference to an agency administrator's decision in a case-

specific matter over which the agency had rulemaking authority because the administrative process afforded the challenger an opportunity to petition for reconsideration, brief its arguments, be heard at a formal hearing, and receive reasoned decisions at multiple levels of review. *Alaska Dept. of Health and Social Services v. Centers for Medicare and Medicaid Servs.*, 424 F.3d 931, 939 (9th Cir. 2005). The Court found that these "hallmarks of 'fairness and deliberation' are clear evidence that Congress intended the Administrator's final determination to 'carry[] the force of law.'" *Id.* The procedures associated with permits reviewed by the EAB include public notice and comment, an opportunity for a public hearing, and a petition for administrative review, which can include (as in this case) extensive briefing of arguments, a formal hearing, and lengthy, reasoned decisions. The EAB process, too, possesses all the hallmarks of fairness and deliberation that carry the force of law. The EAB's statutory interpretations should therefore be given *Chevron* deference.[3] *See, e.g.*, *id.*; *Arizona Health Care Cost Containment Sys. v. McClellan*, 508 F.3d 1243, 1249 (9th Cir. 2007) (Dept. of

[3] The cases cited by Petitioners, Pet. Br. at 22-23, in which this Court reviewed permitting decisions not entitled to *Chevron* deference, are not apposite because those cases involved the review of decisions made by local agency offices that did not possess the force of law. In contrast, the Court is reviewing in this case permits issued following an order by EPA's national appeals board that articulates EPA's statutory interpretations in published decisions that carry the force of law.

Health and Human Services Appeals Board decision reviewing department program decision merits *Chevron* deference); *Navajo Nation v. Dept. of Health and Human Servs.*, 285 F.3d 864, 871-72 (9th Cir. 2002) (final, albeit informal, adjudication by Secretary of Health and Human Services entitled to *Chevron* deference).[4]

Moreover, this Court gives "substantial deference" to EPA's interpretation of its own Clean Air Act regulations. *NRDC, Inc. v. EPA*, 638 F.3d 1183, 1192 (9th Cir. 2011); *see Pepperell Assoc. v. EPA*, 246 F.3d 15, 22 (1st Cir. 2001) ("To the extent that the EAB's decision reflects a gloss on its interpretation of the governing EPA regulations, a reviewing court must also afford those policy judgments substantial deference"). In considering the lawfulness of EPA's interpretation of a Clean Air Act regulation, the interpretation should be given "controlling weight unless it is plainly erroneous or inconsistent with the regulation." *NRDC v. EPA*, 638 F.3d at 1192 (quoting *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512

[4] In the event the Court finds that the statutory interpretations articulated in the EAB decisions are not entitled to *Chevron* deference, then they are entitled to "great respect" under *Skidmore* deference. *See Mead*, 533 U.S. at 228 (the measure of deference may range from 'great respect' to 'near indifference'). Under the *Skidmore* standard, EPA's interpretation is entitled to great respect because of "the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." *Mead*, 533 U.S. at 228.

(1994)). This Court defers to EPA's interpretation unless an alternative reading is compelled by the regulation's plain language or by other indications of the agency intent at the time of the regulation's promulgation. *Id.* This broad deference is "all the more warranted" when the regulation concerns a complex and highly technical regulatory program like the Clean Air Act, that necessarily requires significant expertise and entails the exercise of judgment grounded in policy concerns. *Id.*

II. EPA APPROPRIATELY DETERMINED THAT THE SHELL PERMITS NEED NOT APPLY BACT RESTRICTIONS TO THE ASSOCIATED FLEET.

A. Introduction

In the familiar words of *Chevron, U.S.A., Inc. v. NRDC* regarding review of agency action, "[i]f the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress," but if the relevant statute is silent or ambiguous, "the question for the court is whether the agency's answer is based on a permissible construction of the statute." 467 U.S. at 842-43 Petitioners claim that the "plain language" of section 328 of the Clean Air Act, 42 U.S.C. § 7627 ("Air Pollution from Outer Continental Shelf activities") "requires control of emissions from both OCS sources and their support vessels operating within 25 miles, including application of BACT" Pet. Br. at 24.

However, as stated by the Environmental Appeals Board, "section 328's meaning is not clear, and the broader statutory context does not provide the clarity Petitioners assert." II-ER-269. The question is therefore whether EPA's decision in the Chukchi and Beaufort permits not to require BACT on the Associated Fleet when not attached to the OCS source (*i.e.*, the drill ship *Discoverer*) is based on a permissible construction of the statute. As we demonstrate below, EPA's decision, as authoritatively explained by the EAB, is consistent with section 328; the EPA regulations implementing section 328 (found at 40 C.F.R. § 55.2); the PSD provisions of CAA section 165, 42 U.S.C. § 7475; and the underlying fundamental distinction between "stationary sources" and "mobile sources" that pervades the Clean Air Act.

The final decision of EPA on Petitioners' administrative appeal of the Chukchi and Beaufort Permits was rendered by EPA's Environmental Appeals Board. The EAB decision denying review of that portion of the Chukchi and Beaufort Permits regarding the applicability of BACT is the definitive statement of the Agency's views regarding the objections raised by Petitioners, most of which have also been raised before this Court. As we explained in the Standard of Review section of this brief, the decisions of the EAB on this question of statutory interpretation are entitled to *Chevron* deference.

B. The Language of the Outer Continental Shelf Statute is Ambiguous, and EPA's Determination That BACT is not Required to Control the Emissions of the Associated Fleet is a Permissible Interpretation of the Clean Air Act

The gist of Petitioners' argument is that EPA erred by only requiring BACT controls for the *Discoverer* itself, and for ships from the Associated Fleet when they are attached to the *Discoverer*. In Petitioners' view, EPA also was required to apply BACT to the Associated Fleet when those vessels are within 25 miles of the *Discoverer*. As we will discuss, this argument is unfounded. The statute and EPA's regulations focus BACT and other stationary source requirements on those portions of off-shore drilling operations that are stationary in nature (*i.e.*, to drill ships attached to the seabed), not to aspects of such operations that are more appropriately regulated under the mobile source provisions of the Act (such as in-transit marine vessels). The Region therefore properly limited BACT requirements in the permits to the *Discoverer* and attached support vessels, the EAB thoroughly and convincingly rejected Petitioners' arguments for a more expansive application of BACT, and the Board's decision is correct and entitled to deference here. Finally, to the extent Petitioners present additional arguments in their brief here not presented to the EAB, those arguments are barred and should, in any event, be rejected in their entirety.

Section 328 of the Clean Air Act, 42 U.S.C. § 7627, adopted as part of the 1990 Amendments to the Clean Air Act, directed EPA, after consultation with the Secretary of the Interior and the Coast Guard, to issue regulations requiring "Outer Continental Shelf sources" to "attain and maintain Federal and State ambient air quality standards and to comply with the provisions of part C of Subchapter I" of the CAA.[5] That portion of the Act contains the Prevention of Significant Deterioration of Air provisions, 42 U.S.C. §§ 7470-7492.

It is important to emphasize that it is the "*OCS source*" that is required to "attain and maintain Federal and State ambient air quality standards" and comply with the PSD program. Section 328(a)(1), 42 U.S.C. § 7627(a)(1). As indicated above, the regulations define OCS source to include vessels only when "[p]ermanently or temporarily attached to the seabed and erected thereon and used for the purpose of exploring, developing or producing resources therefrom," or

[5] Section 328(a)(4)(A), 42 U.S.C. § 7627(a)(4)(A), defines "Outer Continental Shelf" with reference to the OCSLA, 43 § U.S.C. 1331. The OCSLA states that the jurisdiction of the United States extends to the "subsoil and seabed of the Outer Continental Shelf" and to "all installations and other devices permanently or temporarily attached to the seabed," which may be erected thereon "for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources." 43 U.S.C. § 1333(a)(1).

"physically attached to an OCS facility, in which case only the stationary sources aspect of the vessels will be regulated." 40 C.F.R. § 55.2.

There is no dispute in this case that the *Discoverer* drill ship is an OCS source when it is attached to the seabed at an authorized drilling location, or that the supply vessel that periodically attaches to the *Discoverer* is an OCS source itself during the time it is attached to the drill ship (only during the time the *Discoverer* is itself an OCS source). There is also no dispute that the vessels of the Associated Fleet are not themselves OCS sources. Rather, this petition for review is concerned only with the fleet of vessels that are associated with or support the *Discoverer*, and more specifically whether the vessels of the Associated Fleet should have been subject to the BACT requirement as part of the Chukchi and Beaufort permits, regardless of whether they are attached to the *Discoverer*. The language of the OCS statute does not specify that the Associated Fleet (as opposed to the OCS source itself) is subject to PSD; rather, it simply states that for purposes of section 328(a)(4)(C) (definition of OCS source), "emissions from any vessel servicing or associated with an OCS source, including emissions while at the OCS source or en route to or from the OCS source within 25 miles of the OCS source, shall be considered direct emissions from the OCS source." Section 328(a)(4)(C), 42 U.S.C. § 7627(a)(4)(C).

Similarly, EPA made clear in its OCS rulemaking that while emissions from vessels in transit to the OCS would count towards the OCS source's potential to emit, it would not subject those vessels to the stationary source requirements in their own right. In the preamble to the proposed OCS regulations, EPA noted that one requirement in the section 328(a)(4)(C) definition of "OCS source" is that the source is regulated or authorized under the Outer Continental Shelf Lands Act. 56 Fed. Reg. at 63,777. EPA stated that it was proposing "not to regulate vessels [*i.e.*, vessels other than drill ships and vessels attached to the drill ship] as 'OCS sources' . . . Drill ships are considered to be an 'OCS source' because they are attached, at least temporarily, to the seabed, and so are authorized and regulated pursuant to the OCSLA; as such, they will be subject to regulation as stationary sources while attached to the seabed." *Id*. EPA continued to explain that "[v]essel emissions related to OCS activity" (*i.e.*, emissions of the Associated Fleet) are "accounted for by including vessel emissions in the 'potential to emit' (defined below)." *Id*. The "potential to emit" of an OCS source "encompasses emissions from any vessel servicing or associated with an OCS source, including emissions while at the OCS source or en-route to or from the OCS source and within 25 miles of the OCS source." *Id*. As a result of inclusion of the Associated Fleet's emissions in the total emissions attributed to the OCS source (in other words, the *Discoverer*), as required by section 328(a)(4)(C), "emissions of attainment

pollutants will be accounted for when PSD impact analyses are performed and increment consumption if calculated." *Id.*; *see also* preamble to the final rule, 57 Fed. Reg. at 40,794 ("All vessel emissions related to OCS activity will be accounted for by including vessel emissions in the 'potential to emit' of an OCS source. Vessel emissions must be included in offset calculations and impact analyses, as required by section 328 and [as] explained" in the notice of proposed rulemaking).[6]

As noted in the "Revised Statement of Basis" for the proposed Chukchi Permit, "[a]side from the supply vessel, none of the other vessels that comprise the Associated Fleet will be physically attached to the *Discoverer* while the *Discoverer* is an OCS source and, therefore, none of these other vessels are considered an OCS source for purposes of this permit." II-SER000384. Consistent with the above-described portion of the preamble from the OCS regulations, EPA noted in issuing these permits that emissions from "vessels servicing or associated with an OCS source that are within 25 miles of the OCS source are considered in determining the 'potential to emit' or 'potential emissions' of the OCS source for purposes of applying the PSD regulations." Emissions from the Associated Fleet "are therefore counted in determining whether the OCS source is required to obtain a PSD

[6] The "offset calculation" referred to occurs when emissions take place in nonattainment areas, which is not the case here.

permit, as well as in determining the pollutants for which BACT is required and whether emissions from the OCS source cause or contribute to a violation of the NAAQS or applicable increment." *Id*. at II-SER000385; *see also* Chukchi Permit Response to Comments, III-ER-505; Beaufort Permit Response to Comments. II-SER000388-89. The Region imposed conditions in both permits to ensure that emissions from the Associated Fleet, along with emissions from the *Discoverer* while it was an OCS source, would not cause or contribute to a violation of any applicable NAAQS or PSD increment. Chukchi Permit, I-ER 159-74, Conditions N, O, P, and Q; Beaufort Permit, I-ER 76-93, Conditions O, P, Q, and R. As to BACT, EPA stated in the Chukchi Permit Revised Statement of Basis that "[a]side from the supply vessel, the Associated Fleet will not be physically attached to the *Discoverer* and therefore will not be part of the OCS source and subject to the BACT requirement." III-ER 562-563.

The Petitioners appealed both the Chukchi and Beaufort Permits to the EAB on numerous grounds. There was very extensive briefing and ultimately three EAB decisions were rendered. In its December 2010 opinion, EAB I, the EAB issued a very detailed opinion regarding Petitioner's argument that the permits were defective because the Associated Fleet was not subject to BACT requirements. The arguments raised by Petitioners before the EAB are essentially repeated before this Court.

As we indicated above, the EAB decision is the definitive expression of the Agency's reasoning and grounds in support of the permits as it relates to the issue of BACT and the Associated Fleet. The EAB's decision is well grounded in the law, articulates EPA's permissible interpretation of the ambiguous OCS provisions as they apply to the PSD BACT requirements, and is entitled to deference, as we describe in detail in the standard of review section above.

Contrary to Petitioners' chief argument, Pet. Br. at 24, there is no unambiguous language of Clean Air Act section 328 dictating that emissions from the *Discoverer*'s associated fleet operating within 25 miles of the drill ship are subject to the PSD requirement to apply BACT. Petitioners argue that because "the [PSD] requirement to install [BACT] applies to all pollution 'emitted from, or which results from' a new source, [42 U.S.C.] 7475(a)(4), the *Discoverer*'s support vessel emissions are plainly subject to the obligation to apply [BACT]." *Id*. at 26-27. Petitioners note that the definition of BACT in CAA section 169(3) is "an emission limitation based on the maximum degree of reduction for each pollutant . . . emitted from or which results from any major emitting facility." From that, they argue that "[a] new major source, whether an OCS source or otherwise, cannot achieve the 'maximum degree of reduction' in its emissions if not all of its emissions are subject to controls." Pet. Br. at 27. They conclude that all emissions

from an OCS source, including those of the Associated Fleet, must be subject to BACT. *Id.*

The Court should reject Petitioners' argument, "because it overlooks ambiguity in section 328 and the relevant statutory context of the CAA's PSD provisions." II-ER-287. While section 328(a)(4)(C) specifically addresses vessel emissions, the same statutory text also maintains a difference between the Associated Fleet emissions and the OCS source: "Specifically, without making the support vessels part of the OCS source, the statute directs that emissions from those vessels while within twenty-five miles of the OCS source 'shall be considered direct emissions from the OCS source.'" II-ER-287. EPA "correctly observes that this inclusion of only the emissions, but not the vessels themselves, maintains a distinction between the OCS source and the vessels servicing the OCS source." *Id.* Thus, "the purpose for this simultaneous exclusion of the Associated Fleet and inclusion of the Associated Fleet emissions is not plain on section 328's face." II-ER-288. As the EAB explained:

> Section 328, itself, simply does not contain any words expressly, or by implication, explaining why the statute distinguishes between the OCS source and vessels servicing the OCS source when directing that such vessels' emissions shall be considered direct emissions from the OCS source. In this respect, section 328's meaning is not clear, at least when read in isolation.

Id.

It is a "fundamental canon that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'" *Wilderness Soc'y v. U.S. Fish & Wildlife Serv.*, 353 F.3d 1051, 1060 (9th Cir. 2003), *quoting FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000)). In this case, "[b]ecause section 328 specifically requires air pollution from *OCS sources* to be controlled to comply with the CAA's PSD provisions, section 328's meaning must be considered within the context of the statute's PSD provisions." II-ER-289 (emphasis supplied).

One of the most basic distinctions in the Clean Air Act is that between the regulation of "stationary sources" (addressed in Subchapter I of the Act, which includes the PSD program) and that of "mobile sources" (addressed in Subchapter II of the Act). EPA's construction of the meaning of section 328 as it relates to the Associated Fleet completely squares with this underlying structure of the Act. As the EAB stated, "Section 328's distinction between the OCS source and vessels servicing the OCS source is consistent with the CAA's general distinction between stationary and mobile sources. Viewed in this light, the OCS source is a stationary source that is located on the outer continental shelf, and the support vessels, including vessels servicing or associated with the OCS source, ordinarily are mobile sources." II-ER-290.

A sea-going vessel is ordinarily considered as a "mobile source." Section 302(z), 42 U.S.C. § 7602(z). Congress was very careful to tie the definition of "OCS source" in section 328, to, among other things, any equipment, activity or facility "regulated or authorized under the [OCSLA]." Section 328(a)(4)(C)(ii), 42 U.S.C. § 7627(a)(4)(C)(ii). As described above, the OCSLA extends the jurisdiction of the United States to "all installations and other devices *permanently or temporarily attached to the [continental shelf] seabed*, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom . . ." 43 U.S.C. § 1333(a)(1) (emphasis supplied). This emphasis on the attachment of the drill ship to the seabed is carried through in EPA's OCS regulations, which define "OCS source" in part to include "vessels only when they are (1) permanently or temporarily attached to the seabed and erected thereon and used for the purpose of exploring, developing or producing resources therefrom, within the meaning of section 4(a)(1) of the OCSLA [43 U.S.C. § 1333(a)(1)]; or (2) physically attached to an OCS facility, *in which case only the stationary sources aspects of the vessels will be regulated*." 40 C.F.R. § 55.2 (emphasis supplied); *see also* 56 Fed. Reg. at 63,777 ("Drill ships are considered to be an 'OCS source' because they are attached, at least temporarily, to the seabed, and so are authorized and regulated pursuant to the OCSLA; as such, they will be subject

to regulation as stationary sources while attached to the seabed.").[7] Thus, in promulgating the OCS regulations, EPA clearly interpreted section 328 to limit the definition of an "OCS source" to "stationary sources."

As described above, the PSD program ordinarily applies only to stationary sources. Section 165(a), 42 U.S.C. § 7475(a). The EAB stated that "the 'stationary source' continues to be the relevant unit of analysis for determining PSD applicability in the offshore context." II-ER-289. There is also no doubt that marine vessels powered by internal combustion engines that are not "OCS sources" are ordinarily considered mobile sources, not stationary sources, and therefore not subject to PSD requirements.

The text of section 328 draws a distinction between OCS sources, on the one hand, and "vessel[s] servicing or associated with an OCS source," on the other. Section 328(a)(4)(C), 42 U.S.C. § 7627(a)(4)(C). As the EAB concluded, "Section 328's distinction between OCS sources and vessels servicing the OCS source is consistent with the CAA's general distinction between stationary and mobile sources." II-ER-290.

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[7] In *Santa Barbara Cnty. Air Pollution Control Dist. v. U.S.EPA*, 31 F.3d 1179, 1181 (D.C. Cir. 1994), the court upheld the regulation's distinction between vessels attached to the seabed and those not attached, finding that "it was reasonable for the EPA to conclude that OCS sources did not include vessels that were merely traveling over the OCS."

In their brief here, Petitioners state that "[a]s section 328 both requires EPA to control air pollution by complying with all [PSD] requirements and, in turn, defines support vessel emissions operating within 25 miles as 'direct emissions from an OCS source,' the statute unambiguously requires drill ship support vessels to be subject to [PSD] requirements." Pet. Br. at 25. However, because of the disparate treatment of OCS sources and support vessels, and the ordinary limitation of PSD requirements to stationary sources, the statutory language is not unambiguous and does not support Petitioners' "plain reading" of the statute.

In order to support their reading of section 328, Petitioners claim that "express statements" from the legislative history of that provision confirm that "Congress intended emissions from support vessels to be controlled in the same manner, and to the same degree, as emissions of the drilling platform or drill ship." Pet. Br. at 29. The Supreme Court has warned that "the authoritative statement is the statutory text, not the legislative history or any other extrinsic material. Extrinsic materials have a role in statutory interpretation only to the extent that they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). If, as Petitioners claim, the language of section 328 is unambiguous, then legislative history is irrelevant. In any case, however, the snippets of legislative history offered as support for Petitioners' position simply do not prove

their point. None of the cited legislative history mentions PSD, let alone BACT, or illuminates the relationship between OCS sources and support ships. The EAB considered that same legislative history while deciding the case:

> These references, however, are less clear than the statutory text and certainly do not indicate that Congress considered the specific question of requiring BACT to control the vessel emissions. The term BACT does not appear in these legislative history statements. Instead, the legislative history shows that Congress intended vessel emissions to be "controlled," "offset," "mitigated," or subject to "regulation," all of which are accomplished to some degree by the Region's decision to include the Associated Fleet's emissions in the ambient air quality analysis and controls to ensure compliance with the NAAQS and PSD increments.

II-ER-294.

Petitioners also argue that section 328's "plain meaning" is "underscored by EPA's own prior use of the term 'direct emissions' in prior rulemakings to define what source emissions are subject to best available control technology." Pet. Br. at 27. In the first instance, however, the Court should not consider this argument, since it was not raised in comments or before the EAB. *Appalachian Power Co. v. EPA*, 251 F.3d 1026, 1036 (D.C. Cir. 2001); 40 C.F.R. § 124.13 (commenters must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position during the public comment period).

In any case, the three Federal Register notices cited by Petitioners do not state that "direct emissions" are subject to BACT. Rather, they state only that "secondary emissions" are *not* subject to BACT, *see* 44 Fed. Reg. 51,924, 51,930,

51,947 (Sept. 5, 1979); 45 Fed. Reg. 52,676, 52,689, 52,728 (Aug. 7, 1980); or they discuss secondary emissions and direct emissions generally, *see* 48 Fed. Reg. 38,742, 38,750 (Aug. 25, 1983). A general discussion in three Federal Register notices over the course of a decade can hardly be said to make the term "direct emissions" a "well-established term" under the PSD program, particularly in light of the apparent absence of that term in the many other Federal Register notices, guidance documents, and applicability determinations relating to the PSD program issued by EPA during that period leading up to the 1990 enactment of section 328. Moreover, these three Federal Register notices preceded Congress' amendment of the Clean Air Act in 1990 to include language specifically excluding from the definition of "stationary source" those emissions "resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle." Section 302(z), 42 U.S.C. § 7602(z).

C. EPA's Interpretation of Its Regulations as Not Requiring the Imposition of BACT on the Associated Fleet was Permissible.

As we have shown above, section 328's language does not have the "plain meaning" asserted by Petitioners. Similarly misplaced is their argument that EPA's decision not to require BACT for the *Discoverer*'s support vessels operating within 25 miles of the drill ship is neither compelled nor justified by the agency's regulatory definition of 'OCS Source.'" Pet. Br. at 36. Petitioners state that in

responding to public comments on the Chukchi proposed permit, which criticized EPA's decision not to apply BACT to the Associated Fleet operating within 25 miles of the drill ship, EPA cited its own regulatory definition of OCS source. Pet. Br. at 36 (citing III-ER-503-05, Chukchi Response to Comments, at 22-24). They represent that EPA stated in the response to comments that its authority to regulate offshore air emissions is limited only to OCS sources, which would preclude application of BACT to support vessels that are not OCS sources themselves or attached to an OCS source. Pet. Br. at 36.

Petitioners first argue that EPA's regulation, 40 C.F.R. § 55.2, does not include vessels not attached to an OCS source in the OCS definition, but "the regulation does not purport to limit EPA's authority to regulate support vessels." They assert that the "plain language" of section 328 does not limit application of PSD requirements to OCS sources in isolation from the support vessels. According to Petitioners, the statute's attribution of "direct emissions" from support vessels to the OCS source means that those emissions "necessarily are subject to all of the [PSD] requirements applied to all other emissions of the parent OCS source, even if the vessels producing the emissions are not themselves classified as stand-alone OCS sources." Pet. Br. at 37.

As to the first point, EPA made clear when adopting the OCS regulations that it interpreted "the definition of 'OCS source' to exclude vessels (other than

drill ships . . .) because they are not 'regulated or authorized' under the OCSLA." 56 Fed. Reg. at 63,777. In contrast, drill ships "are considered to be an 'OCS source' because they are attached, at least temporarily, to the seabed, and so are authorized and regulated pursuant to the OCSLA; as such, they will be subject to regulation as stationary sources while attached to the seabed." *Id*. Thus, EPA asserted a principled reason, based on the language of section 328(a)(4)(C) (which limits OCS sources to those "regulated or authorized under the [OCSLA]"), for determining that support vessels should not be included within the regulatory definition of "OCS source." EPA also stated in the preamble to the final OCS regulation that "only the stationary source activities of vessels [attached to the OCS source] will be regulated under title I of the Act (which contains [New Source Review] and PSD requirements), since EPA is prohibited from directly regulating mobile sources under that title. *See NRDC, Inc., v. EPA*, 725 F.2d 761 (D.C. Cir. 1984) . . . Section 328 does not provide authority to EPA to regulate the emissions from engines being used for propulsion of vessels." 57 Fed. Reg. at 40,793-94. The EAB echoed this conclusion, stating that "[o]rdinarily, mobile sources including vessels, such as the Associated Fleet, would not be included as part of the stationary source." II-ER-290.

Petitioners' argument that the attribution of the "direct emissions" of the Associated Fleet to the OCS source for calculation of PTE "necessarily" makes the

direct emissions subject to all of the PSD requirements applied to all other emissions of the "parent OCS source," Pet. Br. at 37, is simply conclusory. As we stated above, and squarely addressed by EAB in its decision, non-OCS source vessels are generally considered mobile sources, and are carved out of the definition of "stationary source," the only type of sources subject to PSD requirements. Section 165(a), 42 U.S.C. § 7475(a); section 302(z), 42 U.S.C. § 7602(z). II-ER-290, 292-293.

Secondly, Petitioners argue that it was not rational for EPA to regulate the emissions of the support vessels to meet NAAQS and increment requirements, while not applying BACT to those same vessels. Pet. Br. at 38. The EAB met this objection in its decision as well. The EAB first parsed the definition of BACT, CAA section 169(3), and noted that the definition "does not address emissions disconnected from the emissions' source," but provides that a BACT limitation is established, "on a case-by-case basis," by determining what "is achievable for the facility" through "application" of different control methods. 42 U.S.C. § 7479(3). Thus, "[b]y requiring a case-by-case determination focused on what the particular facility can achieve, *Congress placed the facility at the center of the BACT definition*." II-ER-293 (emphasis supplied). The BACT emissions limitation "is determined by a specific consideration of the particular 'major emitting facility' – the 'stationary source' – and what controls appropriately may be applied to that

facility." II-ER-293. In other words, BACT must be applied to the emissions at a *facility*, not simply to *emissions* generally. The EAB stated that petitioners had not explained how a permit issuer could apply the BACT definition in the OCS context to control "direct emissions" without effectively treating the vessels as part of the "stationary source." II-ER-293. The EAB then explained that section 328 itself distinguishes between the OCS source and the support vessels "by not including support vessels within the definition of the OCS source, and the statutory BACT definition places the source of the emissions – the emitting facility – at the center of the permit issuer's case-by-case analysis of the application of controls." II-ER-295. As a result, it is appropriate *not* to apply BACT to vessels in the Associated Fleet, which are not stationary sources, unlike the *Discoverer*, which is an OCS source and regulated under section 328 as a stationary source.

It is also the case that the obligation to control air pollution from OCS sources arises not only through application of the PSD program, but also "as a direct requirement of section 328, which specifically requires the Agency to control air pollution from OCS sources 'to attain and maintain Federal and State ambient air quality standards.' CAA 328(a)(1), 42 U.S.C. § 7627(a)(1)." II-ER-295. The EAB concluded that the "statutory textual differences between compliance with the NAAQS and PSD increments and the application of BACT are more than sufficient to grant the Region the latitude to require the Associated

Fleet's emissions to comply with the NAAQS and PSD increments and to conclude that no BACT 'emissions limitation' may be imposed on the Associated Fleet's emissions." II-ER-295-296. The EAB found that

> The Region's decision gives expression to the statute's general distinction between stationary and mobile sources, to the distinction between the OCS source and support vessels that is maintained by section 328(a)(4)(C)'s text, and to the central role that the statute requires for the facility when the permit issuer determines BACT. The Region's approach also gives expression to the Agency's decision in promulgating the regulations implementing section 328 to provide both that a vessel qualifies as an OCS source '*only when*' it is attached to the seabed or attached to an OCS source and to address vessel emissions in the definition of potential to emit.

II-ER-296-297 (emphasis in original). This conclusion is reasonable and grounded in the statutory language of section 328 and the PSD program. Thus, EPA's interpretation is a "permissible construction" of the statute and regulation, and entitled to deference.

Petitioners note that 40 C.F.R. § 55.2 provides that emissions from the support vessels while at the OCS source and within 25 miles of the OCS source, will be included in the "potential to emit" for the OCS source. They also say that PTE determines whether a source is "major," and therefore subject to PSD requirements, including BACT. Petitioners then proceed to the mistaken assertion that, since the OCS regulations specify that support vessel emissions must be considered in the OCS source's PTE, which in turn determines whether the PSD program applies, "EPA's own regulatory framework, like the statute, compels a

conclusion that such vessels must be subject to [BACT], not the opposite." Pet. Br. at 39-40.

In the preamble to the proposed OCS regulations, EPA stated that "[t]he inclusion of vessel emissions in the total emissions of the stationary source is a statutory requirement under section 328(a)(4)(C). In this manner vessel emissions of attainment pollutants will be accounted for when PSD impact analyses are performed and increment consumption if calculated." 56 Fed. Reg. at 63,777. As a result, 40 C.F.R. § 55.2 provides that the "direct emissions" of the support vessels will be included in the PTE of the OCS source. Both the Chukchi and Beaufort Permits reflect that requirement by including the emissions of the Associated Fleet in the "potential emissions" of the OCS source (*i.e.*, the drill ship and the supply vessel when attached to the drill ship). II-SER000390, II-SER000386, II-SER000323. But, as discussed above, BACT applies to stationary sources – and vessels in the Associated Fleet are not stationary sources.

Thus, Petitioners' argument that including the Associated Fleet's emissions in the *Discoverer*'s potential to emit "compels the conclusion" that those vessels' own emissions are subject to BACT finds no support in the OCS statute, the OCS regulations, or the PSD program.

Finally, Petitioners argue that Congress defined support vessels in association with the "OCS source," rather than making each support vessel a

separate source, so that projects could not avoid PSD applicability by considering each vessel a separate OCS source that individually might have emissions below the PSD major source threshold even though the collective emissions of the fleet would exceed PSD limits. Pet. Br. at 44. However, this argument ignores that EPA's PSD regulations since 1980 have specifically provided for the aggregation of emissions from stationary sources that operate as a single source. 40 C.F.R. § 52.21(b)(6) (requiring aggregation of emissions from stationary sources that are under common control, are contiguous and adjacent, and are activities in the same industrial grouping).

D. Conclusion

As shown above, the structure of the OCS statute (and hence the EPA regulations) in which the definition of "OCS source" is limited to vessels such as the *Discoverer* drill ship (which are attached to the seabed), and support vessels are not OCS sources unless attached to an OCS source, is rooted in the fundamental differentiation between "stationary sources," and "mobile sources" in the Clean Air Act. OCS sources such as the *Discoverer* are logically required to comply with PSD requirements because they are "stationary sources," a prerequisite for applicability of PSD, while support vessels are "mobile sources," which are excluded from the definition of "stationary source." Congress could perhaps have included support vessels in the definition of "OCS source" in section 328, but did

not do so. It instead chose to address vessels that are not OCS sources themselves, only by attributing the "direct emissions" of support vessels to the OCS source. EPA's interpretation of the statute, and of its own regulations, as not requiring that BACT restrictions be imposed on the Associated Fleet is rational and entitled to deference.

III. EPA REASONABLY APPROVED AN AMBIENT AIR BOUNDARY THAT REQUIRES BOTH THE ESTABLISHMENT OF A "SAFETY ZONE" BY THE COAST GUARD AND SHELL'S IMPLEMENTATION OF A PUBLIC ACCESS CONTROL PLAN TO PREVENT PUBLIC ACCESS TO THE ZONE.

EPA evaluates emissions to the "ambient air" for the purpose of determining a source's compliance with NAAQS and PSD increments. Ambient air consists of the air accessible to the general public. EPA reviews any proposed boundary for the "ambient air" surrounding a source on a case-by-case basis. EPA guidance for evaluating ambient air boundaries for land-based sources sets two criteria based on control of and accessibility to the land surrounding the source. In the case of sources located over water, EPA has adapted the accessibility criteria used for land-based sources to account for the overwater location of the source. In a past permit for an overwater source, EPA considered a safety zone established by the Coast Guard that prohibits the public from entering the zone together with a surveillance program as meeting the regulatory requirement that public access be precluded. EPA followed this approach in drafting the Shell permits by prohibiting

drill ship operations unless the overwater area that Shell seeks to exclude from ambient air is subject to a safety zone established by the Coast Guard and Shell takes additional steps to prevent public access to the zone. EPA's establishment of permit conditions to recognize this ambient air boundary was neither arbitrary nor capricious, and should be upheld.

A. The Shell Permits Reflect a Reasonable Interpretation and Application of EPA's Regulation Defining Ambient Air in the Context of Emissions from Sources over Water.

The touchstone for establishing the boundaries of ambient air for Clean Air Act regulatory purposes is the extent of public access. For over 40 years, an EPA regulation has defined "ambient air" as "that portion of the atmosphere, external to buildings, to which the general public has access." 40 C.F.R. § 50.1(e). When determining in the permitting context the portion of the atmosphere to which the general public has access, EPA conducts a "case-by-case evaluation of the facts." 50 Fed. Reg. 7,056, 7,057 (Feb. 20, 1985) (the limitations on access necessitate a case-by-case evaluation of the facts); *see* III-ER-598 (EPA reviews individual situation of access on a case-by-case basis). In a December 19, 1980, letter from former EPA Administrator Douglas M. Costle to former Senator Jennings Randolph (the "Costle letter"), Administrator Costle stated that an exemption from ambient air is available only for the portion of the atmosphere "over land owned or controlled by the source and to which public access is precluded by a fence or

other physical barriers." III-ER 598. In the situation of water-based sources, EPA has interpreted its regulatory definition in this and prior cases to exempt from ambient air that portion of the atmosphere over water surrounding the source that EPA determined is inaccessible to the public. III-ER 585-86. In the permits at issue in this case, as well as in previous overwater situations, the boundary corresponded to the area inside a "safety zone" established by the Coast Guard within which members of the public are prohibited from entering.

The use of a Coast Guard safety zone in these permits to establish the ambient air boundary for a water-based source is a reasonable application of EPA's regulatory definition of ambient air. Safety zones may be established by the Coast Guard around OCS facilities to promote the safety of life and property on the facilities, their appurtenances and attending vessels, and on the adjacent waters within the safety zones. 33 C.F.R. § 147.1. Regulations adopted for safety zones may prevent access to the zone by vessels. *Id.* The terms and conditions of safety zones are established following notice-and-comment rulemaking initiated by the Coast Guard. *Id.* § 147.10. For example, the Coast Guard established a temporary safety zone for the *Discoverer* in the Chukchi and Beaufort Seas for the 2010 drilling season that prohibited public access within 500 feet of the outer edge of the *Discoverer* except for attending vessels and vessels authorized by the Coast Guard.

75 Fed. Reg. 18,404, 18,407 (Apr. 12, 2010).[8] In connection with a prior permitting action for a water-based source, EPA informed the New York State Department of Environmental Conservation that "[t]he 'safety zone' approach represents a reasonable surrogate for a source's fence or physical barrier and thus could act as an ambient air boundary." III-ER-586. In other words, the boundary of a safety zone within which the Coast Guard prohibits public access can, based on the facts of a specific case, establish the portion of the atmosphere to which the public does not have access under EPA's regulatory definition.

The permit terms for the *Discoverer* operations represent a reasonable, case-specific determination of the portion of the atmosphere to which the public will not have access. The permits expressly preclude *Discoverer* operations unless several measures are in place that prevent public access. First, the *Discoverer* must be subject to a currently effective safety zone established by the Coast Guard that encompasses an area within at least 500 meters from the center point of the *Discoverer* and that prohibits members of the public from entering the area, except for attending vessels or vessels authorized by the Coast Guard. I-ER-14; I-ER-

[8] The *Discoverer* did not undertake drilling activities in 2010 in the Chukchi and Beaufort Seas, and that temporary safety zone expired on November 30, 2010. *Id*. Earlier this year, the Coast Guard proposed to establish a 500-meter safety zone for operation of the *Discoverer* in the Chukchi and Beaufort Seas for the 2012 drilling season. 77 Fed. Reg. 10,707 (Feb. 23, 2012).

112. Second, Shell must develop and implement a public access control program that will locate, identify, and intercept the general public in the vicinity of the *Discoverer* to inform the public that they are prohibited by Coast Guard regulations from entering the safety zone. *Id.* In addition, the public access control program must communicate to the North Slope communities on a periodic basis the time period when exploration activities are expected to begin and end at a drill site, the location of the drill site, and any restrictions on activities in the vicinity of exploration operations. *Id.* The EAB found that these permit terms reflect a reasonable interpretation of EPA's regulatory definition and an appropriate application of the definition to the specific circumstances associated with access to the atmosphere over the Beaufort and Chukchi Seas where the *Discoverer* will be anchored. II-ER 244-45. This regulatory interpretation is entitled to substantial deference. *See NRDC, Inc. v. EPA*, 638 F.3d at 1192.

The safety purpose on which the Coast Guard bases safety zones does not make the zones inappropriate for use in establishing ambient air boundaries. *Cf.* Pet. Br. at 50-51. As the EAB reasonably noted, the important fact is that access within the zone will be strictly limited, not the reason behind it. II-ER-245 at n. 56. In this regard, the safety zone is similar to a fence constructed around a land-based industrial source for safety reasons but which is subsequently used to establish an ambient air boundary. Further, because the permits require Shell to

implement a program to locate, identify and intercept members of the public to prohibit them from entering the safety zone, the original safety purpose does not compromise the limitation on access.

Moreover, the remote possibility that the Coast Guard would permit members of the general public to enter the safety zone does not make EPA's reliance on the safety zone unreasonable. *Cf.* Pet. Br. at 50. In establishing the 2010 safety zone, the Coast Guard emphasized the danger that could occur to the *Discoverer* and its crew, to the vessel and crew of any third party vessel entering the safety zone, and to the environment in the event of a vessel collision or a fouling of the *Discoverer's* anchor lines. 75 Fed. Reg. 18,405-06. In light of these safety concerns identified by the Coast Guard, EPA reasonably determined that the Coast Guard will not allow members of the public to enter the safety zone.[9]

The Shell permits do not solely rely on third party control of the ambient air boundary. *Cf.* Pet. Br. at 50. The permits require the establishment of a Coast Guard safety zone, but EPA determined that the presence of the safety zone alone was not sufficient to establish an ambient air boundary for the *Discoverer*. For this reason, the permits also require Shell to prepare and implement the public access

[9] In the Coast Guard's proposal to establish a safety zone in 2012, the Coast Guard discussed the possibility of criminal sanctions to enforce the safety zone given the remote location and the need to protect the environment. 77 Fed. Reg. at 10,708.

control program to locate, identify and intercept the public by radio, physical contact, or other means to inform the public that they cannot enter the safety zone. The safety zone together with the public access control program gives not only the Coast Guard, but also Shell, the responsibility to further help prevent the public from accessing the area within the zone.

B. The Shell Permits Are Consistent with EPA Regulations and Its Prior Interpretation of Those Regulations.

Contrary to Petitioners' argument, Pet. Br. at 49-52, EPA's permit terms are consistent with both its governing regulatory definition and EPA's interpretation of that regulation in the context of offshore sources. EPA's regulation defines ambient air as the portion of the atmosphere external to buildings to which the general public has access. 40 C.F.R. § 50.1(e). EPA's permits contain terms expressly directed to identifying those limited areas of the Beaufort and Chukchi seas to which the general public will not have access. The EAB found that the permits' terms are consistent with the regulatory language and its focus on public access. *See* II-ER-240-42.

Further, the permits' approach to ambient air boundaries is not a change from, but rather consistent with, EPA's application of its regulations to similar off-shore sources. As the EAB observed, EPA Region 10's analysis was entirely consistent with a similar analysis undertaken by EPA Region 2 in 2007 that

involved an offshore liquefied natural gas facility. II-ER 244. In that earlier analysis, EPA Region 2, in consultation with EPA's Office of Air Quality Planning and Standards, determined that use of a proposed Coast Guard safety zone was appropriate for defining an ambient air boundary around the overwater facility. III-ER-585-86. Moreover, this 2007 determination references previous permitting decisions involving overwater facilities in which EPA regional offices used the Coast Guard's safety zone as the boundary for defining ambient air. II-ER-244; III-ER-586. Thus, the Shell permits' use of a safety zone is consistent with prior EPA interpretations of its regulatory definition when applied to water-based sources.

Petitioners' arguments rely heavily on EPA's interpretations of its regulatory definition of ambient air as applied to land-based sources, see Pet. Br. at 49-52, but those interpretations do not create an inconsistency with EPA's approach to the water-based sources covered by the Shell permits. EPA agrees with Petitioners that, with regard to land-based sources, EPA evaluates ambient air boundaries based upon a source's ownership or control of land and the presence of physical barriers to prevent access. While these criteria are appropriate to evaluate access to air around land-based sources, sources located over waters of the Arctic Ocean cannot own or have exclusive control of the site nor can they erect a fence or physical barrier on the open seas. However, in issuing the two permits to Shell,

EPA applied the two principles reflected in the interpretation set forth in the Costle letter for the establishment of an exemption – control of property and efforts to limit public access – to sources located over water, miles from the nearest coast. III-ER-356-57. It determined that the Coast Guard safety zone provided legal authority to exclude the general public from the area inside the zone. III-ER-357. In addition, Shell must take steps to prevent access by implementing its public access control program. *Id.* On this basis, the EAB reasonably determined that the terms and conditions of the permit are consistent with EPA's regulatory definition of ambient air and the interpretation of those regulations offered in the Costle letter. *See, e.g.*, *NetCoalition v. S.E.C.*, 615 F.3d 525, 537 (D.C. Cir. 2010) (agency did not make an unexplained change because prior statements addressed different circumstances).

C. To the Extent EPA Has Departed From Its Prior Interpretation of Its Regulatory Definition of Ambient Air, It Fully and Adequately Justified the Change.

Even if EPA's approach is deemed inconsistent with the Costle letter and other prior guidance addressing land-based sources, EPA fully explained its reasons for adapting its regulatory interpretation in the context of water-based sources. A change in policy does not justify heightened judicial scrutiny of agency action. *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 514-15 (2009).

Rather, the agency need only display awareness that it is changing position and show that there are good reasons for the new policy. *Id.* at 515.

Here, while EPA did not view these permit decisions as a change in policy, it clearly displayed awareness that it was adapting its prior regulatory interpretation of its definition of ambient air to fit a different situation. The EAB decision and EPA's response to comments both discussed at length the Costle letter and other informal guidance that applied the criteria discussing ownership or control of land and physical barriers to access. II-ER 239-46; III-ER 356-57. This is not a case in which prior policy documents were "casually ignored" or disregarded. *See Nw. Envtl. Defense Ctr. v. Bonneville Power Admin.*, 477 F.3d 668, 687-88 (9th Cir. 2007). Petitioners do not contend otherwise.

Instead, Petitioners incorrectly argue that EPA failed to explain adequately its departure from its prior interpretation. Pet. Br. at 53-54. Petitioners' argument overlooks the seven pages of discussion of this issue in the EAB decision, which includes the quotation of a portion of EPA's response to comments on this topic. As the EAB recognized, EPA's interpretation of its regulatory definition articulated in the Costle letter was written with overland situations in mind. II-ER-244; III-ER-598 (referring to "land" and "fences"). As a result, EPA explained, it adapted the two specific criteria in the Costle letter to address activities that occur over open water. II-ER-242. EPA then explained how it applied the two

principles of the Costle letter underlying these specific criteria - control of property and efforts to limit access – to the situation of water-based sources. EPA explained its determination that the safety zone established by the Coast Guard is analogous to the legal authority associated with ownership or control of land, because the safety zone provides legal authority to exclude the general public from the area inside the zone. II-ER-243-46; III-ER-357. EPA also explained that Shell demonstrated measures to limit access by proposing a public access control program that would locate, identify, and intercept the public to inform them that they are prohibited from entering the safety zone. II-ER-244-46; III-ER-357. EPA's response to comments explained that the program of monitoring and notification for an overwater location is sufficiently similar to a fence or physical barrier on land that the safety zone qualifies for exclusion from ambient air, and the EAB concurred with this explanation. II-ER-244; III-ER-357. Thus, EPA adequately explained its reliance on a Coast Guard safety zone and public access control program, in lieu of land ownership and a physical barrier, to determine public accessibility under its definition of ambient air. EPA certainly set forth its discussion of its adaptation of its policy for land-based sources so that this Court can understand the basis of the agency's action. *See Nw. Envtl. Defense Ctr.*, 477 F.3d 668, 688 (9th Cir. 2007).

EPA did not "ignore EPA's decades old interpretation of the ambient air regulation" nor did it "gloss over" prior precedents. Pet. Br. at 53-54. It addressed and adapted the interpretation in a manner fully consistent with the regulatory definition. The EAB's decision was not arbitrary, capricious, or contrary to law.

CONCLUSION

EPA's interpretations of the Clean Air Act and its regulations as not requiring the imposition of BACT on the Associated Fleet and as authorizing the ambient air boundaries included in the permits are permissible and reasonable, and should receive deference from this Court. The petition for review should be denied.

Respectfully submitted,

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STATEMENT OF RELATED CASES

Pursuant to Circuit Rule 28-2.6, EPA states that *Native Village of Point Hope, et al. v. Salazar*, Nos. 11-72891, 11-72943, 12-709440, and 12-70549 (9th Cir.) (to be argued May 15, 2012), is also concerned with Shell's proposed exploratory activities in the Chukchi and Beaufort Seas, but does not concern Clean Air Act permitting.

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME REQUIREMENTS

This brief complies with the type-volume limitation of Fed. R. Civ. P. 32(1)(7)(B) because this brief contains 13,149 words, excluding parts of the brief exempted by Fed. R. App. P. 32 (a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Time New Roman type style.

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing RESPONDENT'S ANSWER BRIEF by Notice of Electronic Filing using the Court's CM/ECF system, which will send notice of such filing via email to all counsel of record. Additionally, RESPONDENT'S SUPPLEMENTAL EXCERPTS OF RECORD was served via U. S. Mail on:

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ADDENDUM

Effective:[See Text Amendments]

United States Code Annotated Currentness

Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter II. Emission Standards for Moving Sources
Part A. Motor Vehicle Emission and Fuel Standards (Refs & Annos)
§ 7550. Definitions

As used in this part--

****

(10) Nonroad engine

The term "nonroad engine" means an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 of this title or section 7521 of this title.

(11) Nonroad vehicle

The term "nonroad vehicle" means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.

CREDIT(S)

(July 14, 1955, c. 360, Title II, § 216, formerly § 208, as added Oct. 20, 1965, Pub.L. 89-272, Title I, § 101(8), 79 Stat. 994, renumbered § 212; amended Nov. 21, 1967, Pub.L. 90-148, § 2, 81 Stat. 503, renumbered § 213; amended Dec. 31, 1970, Pub.L. 91-604, §§ 8(a), 10(d), 11(a)(2)(A), 84 Stat. 1694, 1703, 1705, renumbered § 214, June 22, 1974, Pub.L. 93-319, § 10, 88 Stat. 261, renumbered § 216, Aug. 7, 1977, Pub.L. 95-95, Title II, § 224(d), 91 Stat. 767; Nov. 15, 1990, Pub.L. 101-549, Title II, § 223, 104 Stat. 2503.)

[FN1] So in original. Probably should be set off by quotation marks.

Current through P.L. 112-104 (excluding P.L. 112-91, 112-95, 112-96, and 112-102) approved 4-2-12

END OF DOCUMENT

Effective:[See Text Amendments]

United States Code Annotated Currentness

Title 42. The Public Health and Welfare
Chapter 85. Air Pollution Prevention and Control (Refs & Annos)
Subchapter III. General Provisions
§ 7602. Definitions

When used in this chapter--

****

(z) Stationary source.--The term "stationary source" means generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 7550 of this title.

CREDIT(S)

(July 14, 1955, c. 360, Title III, § 302, formerly § 9, as added Dec. 17, 1963, Pub.L. 88-206, § 1, 77 Stat. 400, renumbered Oct. 20, 1965, Pub.L. 89-272, Title I, § 101(4), 79 Stat. 992; amended Nov. 21, 1967, Pub.L. 90-148, § 2, 81 Stat. 504; Dec. 31, 1970, Pub.L. 91-604, § 15(a)(1), (c)(1), 84 Stat. 1710, 1713; Aug. 7, 1977, Pub.L. 95-95, Title II, § 218(c), Title III, § 301, 91 Stat. 761, 769; Nov. 16, 1977, Pub.L. 95-190, § 14(a)(76), 91 Stat. 1404; Nov. 15, 1990, Pub.L. 101-549, Title I, §§ 101(d)(4), 107(a), (b), 108(j), 109(b), Title III, § 302(e), Title VII, § 709, 104 Stat. 2409, 2464, 2468, 2470, 2574, 2684.)

[FN1] So in original.

Current through P.L. 112-104 (excluding P.L. 112-91, 112-95, 112-96, and 112-102) approved 4-2-12

END OF DOCUMENT

Effective: July 20, 2011

Code of Federal Regulations Currentness

Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter C. Air Programs
Part 52. Approval and Promulgation of Implementation Plans (Refs & Annos)
Subpart A. General Provisions (Refs & Annos)
➡ § 52.21 Prevention of significant deterioration of air quality.

****

(b) Definitions. For the purposes of this section:

****

(4) Potential to emit means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

(5) Stationary source means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

(6) Building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same first two digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101–0066 and 003–005–00176–0, respectively).

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[43 FR 26403, June 19, 1978, as amended at 44 FR 27571, May 10, 1979; 45 FR 52735, Aug. 7, 1980; 47 FR 27561, June 25, 1982; 49 FR 43209, Oct. 26, 1984; 50 FR 28550, July 12, 1985; 51 FR 32179, Sept. 9, 1986; 51 FR 40675, 40677, Nov. 7, 1986; 52 FR 24714, July 1, 1987; 52 FR 26401, July 14, 1987; 53 FR 396, Jan. 6, 1988; 53 FR 40671, Oct. 17, 1988; 54 FR 27285, 27300, June 28, 1989; 56 FR 5506, Feb. 11, 1991; 57 FR 3946, Feb. 3, 1992; 57 FR 32336, July 21, 1992; 58 FR 31637, June 3, 1993; 58 FR 38883, July 20, 1993; 60 FR 40474, Aug. 9, 1995; 61 FR 9918, March 12, 1996; 61 FR 41894, Aug. 12, 1996; 67 FR 80274, Dec. 31, 2002; 68 FR 61279, Oct. 27, 2003; 68 FR 63028, Nov. 7, 2003; 69 FR 40276, July 1, 2004; 70 FR 71704, Nov. 29, 2005; 72 FR 24078, May 1, 2007; 72 FR 32528, June 13, 2007; 72 FR 72617, Dec. 21, 2007; 73 FR 28349, May 16, 2008; 73 FR 77900, Dec. 19, 2008; 74 FR 26099, June 1, 2009; 74 FR 48156, Sept. 22, 2009; 74 FR 50117, Sept. 30, 2009; 74 FR 65695, Dec. 11, 2009; 75 FR 16016, 16017, March 31, 2010; 75 FR 31606, June 3, 2010; 75 FR 64905, Oct. 20, 2010; 76 FR 17555, March 30, 2011; 76 FR 28661, May 18, 2011; 76 FR 43507, July 20, 2011]

SOURCE: 57 FR 27936, 27939, 27942; 37 FR 10846, May 31, 1972; 50 FR 31369, Aug. 2, 1985; 57 FR 32336, July 21, 1992; 57 FR 37104, Aug. 18, 1992; 58 FR 6606, Feb. 1, 1993; 58 FR 38883, July 20, 1993; 59 FR 39859, Aug. 4, 1994; 62 FR 8328, Feb. 24, 1997, unless otherwise noted.

AUTHORITY: 42 U.S.C. 7401 et seq.

40 C. F. R. § 52.21, 40 CFR § 52.21

Current through May 3, 2012; 77 FR 26212.

END OF DOCUMENT

Effective: October 11, 2005

Code of Federal Regulations Currentness

Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter D. Water Programs
Part 124. Procedures for Decisionmaking (Refs & Annos)
Subpart A. General Program Requirements
§ 124.2 Definitions.

(a) In addition to the definitions given in §§ 122.2 and 123.2 (NPDES), 501.2 (sludge management), 144.3 and 145.2 (UIC), 233.3 (404), and 270.2 and 271.2 (RCRA), the definitions below apply to this Part, except for PSD permits which are governed by the definitions in § 124:41. Terms not defined in this section have the meaning given by the appropriate Act.

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Environmental Appeals Board shall mean the Board within the Agency described in § 1.25(e) of this title. The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in RCRA, PSD, UIC, or NPDES permit appeals filed under this subpart, including informal appeals of denials of requests for modification, revocation and reissuance, or termination of permits under Section 124.5(b). An appeal directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation does not preclude the Environmental Appeals Board from referring an appeal or a motion under this subpart to the Administrator when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator by the Environmental Appeals Board, all parties shall be so notified and the rules in this subpart referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator.

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[48 FR 14264, April 1, 1983; 48 FR 30115, June 30, 1983; 49 FR 25981, June 25, 1984; 53 FR 37410, Sept. 26, 1988; 54 FR 18785, May 2, 1989; 57 FR 5335, Feb. 13, 1992; 57 FR 60129, Dec. 18, 1992; 58 FR 67983, Dec. 22, 1993; 59 FR 64343, Dec. 14, 1994; 65 FR 30910, May 15, 2000; 70 FR 53449, Sept. 8, 2005]

SOURCE: 45 FR 33484, May 19, 1980, as amended at 48 FR 14264, April 1, 1983; 58 FR 67983, Dec. 22, 1993; 65 FR 30910, May 15, 2000, unless otherwise noted.

AUTHORITY: Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.; Safe Drinking Water Act, 42 U.S.C. 300f et seq.; Clean Water Act, 33 U.S.C. 1251 et seq.; Clean Air Act, 42 U.S.C. 7401 et seq.

40 C. F. R. § 124.2, 40 CFR § 124.2

Current through May 3, 2012; 77 FR 26212.

END OF DOCUMENT

Effective:[See Text Amendments]

Code of Federal Regulations Currentness

Title 40. Protection of Environment
Chapter I. Environmental Protection Agency (Refs & Annos)
Subchapter D. Water Programs
Part 124. Procedures for Decisionmaking (Refs & Annos)
Subpart A. General Program Requirements
§ 124.13 Obligation to raise issues and provide information during the public comment period.

All persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Director's tentative decision to deny an application, terminate a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under § 124.10. Any supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. Commenters shall make supporting materials not already included in the administrative record available to EPA as directed by the Regional Administrator. (A comment period longer than 30 days may be necessary to give commenters a reasonable opportunity to comply with the requirements of this section. Additional time shall be granted under § 124.10 to the extent that a commenter who requests additional time demonstrates the need for such time.)

[49 FR 38051, Sept. 26, 1984]

SOURCE: 45 FR 33484, May 19, 1980, as amended at 48 FR 14264, April 1, 1983; 58 FR 67983, Dec. 22, 1993; 65 FR 30910, May 15, 2000, unless otherwise noted.

AUTHORITY: Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.; Safe Drinking Water Act, 42 U.S.C. 300f et seq.; Clean Water Act, 33 U.S.C. 1251 et seq.; Clean Air Act, 42 U.S.C. 7401 et seq.

40 C. F. R. § 124.13, 40 CFR § 124.13

Current through May 3, 2012; 77 FR 26212.

END OF DOCUMENT

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL-4036-9]

Outer Continental Shelf Air Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing a new part 55 of chapter I of title 40 of the Code of Federal Regulations. This Part would establish requirements to control air pollution from outer continental shelf ("OCS") sources.

Section 328 of the Clean Air Act ("the Act") (42 U.S.C. 7401, *et seq.*), as amended by Public Law 101-549, the Clean Air Act Amendments of 1990 ("CAAA-90"), enacted on November 15, 1990, requires EPA to promulgate a rule establishing air pollution control requirements for OCS sources. The purpose of the requirements is to attain and maintain federal and state ambient air quality standards; to comply with part C of title I, and to provide for equity between onshore sources and OCS sources located within 25 miles of state seaward boundaries.

The proposed requirements apply to all OCS sources except those located in the Gulf of Mexico west of 87.5 degrees longitude (near the border of Florida and Alabama). New sources must comply with the requirements on the day of their promulgation, and existing sources must comply within 24 months of promulgation For sources located within 25 miles of a state boundary, the requirements will be the same as the requirements that would be applicable if the source were located in the corresponding onshore area ("COA"). In states affected by this rule, state boundaries extend three miles from the coastline except on the gulf coast of Florida, where the State's boundary extends three leagues (approximately 9 miles) from the coastline. Sources located beyond 25 miles of state boundaries will be subject to federal requirements for Prevention of Significant Deterioration ("PSD") (40 CFR 52.21). New Source Performance Standards ("NSPS") (40 CFR part 60), and National Emissions Standards for Hazardous Air Pollutants ("NESHAPS") (40 CFR part 61) apply to the extent they are rationally related to protection of ambient air quality standards. EPA is proposing that, when promulgated, the following federal requirements will also apply: The federal operating permit program (40 CFR part 71) and enhanced compliance and monitoring regulations promulgated pursuant to section 114(a)(3) of the Act. Beyond 25 miles of state boundaries of OCS program requirements will be implemented and enforced solely by EPA. Part 55 also establishes procedures to allow the Administrator to exempt any OCS source from a specific onshore control requirement if it is technically infeasible or poses an unreasonable threat to health or safety.

DATES: Comments on the proposed regulations must be received by February 3, 1992. The EPA will hold public hearings in January 1992 at the addresses listed below. Requests to present oral testimony must be received on or before December 19, 1991.

ADDRESSES: Comments must be mailed (in duplicate if possible) to either of the addresses below:

EPA Air Docket (A-1), Attn: Docket No. A-91-45, Environmental Protection Agency, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE-131), Attn: Air Docket No. A-91-45, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The hearings will be held at the following places:

January 6, 1992, 9 a.m.-5 p.m., EPA, Region 9, 75 Hawthorne Street, San Francisco, CA.

January 7, 1992, 9 a.m.-5 p.m., Los Angeles Hyatt Regency, 711 Hope Street, Los Angeles, CA.

January 13, 1992, 9 a.m.-5 p.m., EPA Headquarters, Waterside Mall, 401 M Street, SW., Washington, DC.

January 21, 1992, 9 a.m.-5 p.m., Clarion Hotel, 4800 Spenard Road, Anchorage, Alaska.

Persons interested in attending any of the hearings or wishing to present oral testimony should contact Ms. Linda Barajas in writing at EPA, Region 9, Air and Toxics Division (A-3-1), 75 Hawthorne St., San Francisco, CA 94105.

Docket: This rulemaking is determined to be subject to the requirements of section 307(d) of the Clean Air Act. Supporting information used in developing the proposed rule is contained Docket No. A-91-76. This docket is available for public inspection and copying at the Docket addresses listed above. In Washington, the docket will be available to the public in room M-1500 from 8:30 a.m. to 12 p.m. and 1:30 p.m. to 3:30 p.m., Monday through Friday, excluding legal holidays. In San Francisco the docket will be available to the public in the EPA library, 13th floor, from 9 a.m. to 3 p.m., Monday through Friday. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Alison Bird, Air and Toxics Division (A-2), U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: This preamble is organized according to the following outline:

List of Subjects in 40 CFR Part 55

Section I provides the background on the purpose and expected benefits of adding section 328 to the Act.

Section II contains a discussion of the rule and provides background information on the concepts behind the rule. This section also provides a comprehensive background on any issues or controversial aspects considered with respect to the rule.

Section III presents additional topics important to the OCS regulatory program. These areas are not related to specific regulatory requirements and so they are addressed in a separate section of the preamble.

Section IV contains the administrative requirements that accompany federal regulatory actions. These include the topics listed in the preamble outline.

Section V contains the list of subjects included in the proposed 40 CFR part 55.

Many citations (e.g., "[see § 55.10]") are made in this preamble. These citation sections will not be followed by

a notation of their origin such as "of this preamble" or "of section 328." Rather, the reader can recognize the origins of the sections by their nature:

- Sections of the preamble begin with a roman numeral.
- Sections of the OCS regulations appear as 55.xx.
- Sections of the Act are numbered in the hundreds.
- Sections of non-OCS EPA regulations are preceded by 40 CFR.

This preamble makes frequent use of the term "state," usually meaning the state air pollution control agency that would be the permitting authority. The reader should assume that use of "state" may also reference a local air pollution permitting agency, or certain Indian Tribes which can be the permitting authority for areas within their jurisdiction. In some cases, the term "delegated agency" is used and can refer to the state agency, the local agency, or the Indian Tribe, depending on the delegation status of the program.

I. Background and Purpose

A. Purpose and Intent

The passage of the CAAA–90 was a major accomplishment for protection of public health and the environment in the United States. This proposed rulemaking is one of the first actions that EPA will undertake to fulfill its rule development responsibilities under the Act. The intent of Congress in adding section 328 was to protect ambient air quality standards onshore and ensure compliance with the PSD requirements. EPA is to accomplish this by controlling emissions of pollutants for which ambient standards have been set and their precursors (criteria pollutants) from the OCS that can be transported onshore and affect ambient air quality. It is also the clear intent of Congress to create a more equitable regulatory environment between onshore sources and OCS sources located within 25 miles of states' seaward boundaries. To accomplish this objective, Congress required EPA to promulgate regulations that require OCS sources within 25 miles of states' seaward boundaries to comply with the same requirements that would be applicable if the OCS source were located in the COA.

In section 328, Congress transferred authority to regulate sources on part of the OCS from the Department of Interior ("DOI") to EPA. This was an attempt to consolidate the authority to regulate air pollution within EPA, the agency with primary federal authority for regulating air pollution. Congress further specified that EPA's initial rulemaking must establish requirements for sources within 25 miles of state boundaries that are the same as would be applicable if the source were located in the COA. In this way, the responsibility for protecting the environment will be shared proportionately and equitably by onshore and offshore sources. DOI retains authority on the OCS adjacent to Texas, Louisiana, Mississippi, and Alabama (in the Gulf of Mexico, west of 87.5 degrees longitude). However, Congress requires DOI to complete a study on the effects of OCS emissions on areas that remain under DOI's jurisdiction and are classified as nonattainment for nitrogen dioxide or ozone. DOI must report the results to Congress by November 15, 1993.

Historically in California, the onshore community felt that OCS emission sources were not bearing a fair share of the burden of air pollution control. Onshore sources were subject to increasingly stringent controls while virtually identical sources operated on the OCS with very few controls and little mitigation. The onshore community generally disagreed with the DOI argument and the distance of OCS sources from shore reduced their effects on onshore air quality and therefor reduced the need for controls and offsets. The result was a confrontational atmosphere in which the onshore community felt that OCS activity was encouraged at the expense of air quality or economic growth onshore. Start-up of OCS sources was often delayed by years due to extended litigation and negotiations on air quality issues. As a result, a trend developed for new OCS platforms constructed adjacent to California to apply controls to reduce emissions and obtain offsets to mitigate the impacts of remaining emissions.

This pattern of delay and confrontation in California could well have developed in other coastal areas as they began to experience OCS activity. EPA intends that the proposed OCS rule will result in a more orderly, less burdensome system of air quality permitting for OCS sources. This certainty may speed up the permitting process, which may reduce costs in some instances, particularly offsetting the additional costs associated with the rule's more stringent requirements for controls and offsets. The proposed rule thus should result in a more stable regulatory atmosphere, allowing companies to plan with greater certainty the amount of time needed to obtain necessary permits to begin construction and operation of a proposed OCS source. This regulatory certainty is particularly important in light of the President's national energy strategy, which includes the environmentally sound development of OCS reserves.

EPA would like to consolidate the review of a source's air quality impacts with reviews of the source's impact on other environmental media (e.g. water and land). EPA is soliciting specific comments and suggestions as to how this might be promoted by this rulemaking, keeping in mind the limitations of section 328.

In carrying out the non-discretionary provisions of Section 328, the inherent cost effectiveness number ($/per ton pollutant reduced) do not necessarily, in the Agency's opinion, establish a precedent for cost-effectiveness benchmarks. Had Congress granted the Agency flexibility for this provision, the Agency may have established *de minimis* levels which would have exempted some of these sources in certain areas from nitrogen oxides ("NO_x") and volatile organic compounds ("VOC") controls.

B. Regulatory History

The 1978 amendments to the Outer Continental Shelf Lands Act ("OCSLA") (43 U.S.C. 1331 *et seq*), as interpreted by the Ninth Circuit in *State of California* v. *Kleppe*, 604 F. 2d 1187 (1979), clarified that DOI (rather than EPA) had sole authority to regulate air emissions from activities authorized under the OCSLA. The amendments to the OCSLA required DOI to promulgate rules to protect the national ambient air quality standards ("NAAQS") by regulating air emissions from activities authorized under the OCSLA. In 1978, DOI published its first rulemaking effort in regard to air quality in an Advance Notice of Proposed Rulemaking ("ANPRM").

EPA comments in response to the 1978 ANPRM (D. Hawkins, "EPA Comments in Response to DOI ANPRM of 12/28/78," 1979), included suggestions to "assure that onshore and offshore facilities are treated the same." At that time EPA also pointed out the possibility of negative impacts on onshore economic growth, stating "* * * the construction of OCS sources will have an adverse impact on both air quality and the ability of sources to be built onshore * * *. The development of the OCS could impact growth of onshore areas in this fashion because emissions sources must be added to the baseline * * *." Finally, EPA suggested that for sources that may significantly affect onshore air quality, DOI requires that "* * * the controls imposed be whatever controls are imposed by the adjacent state on like sources within its territorial jurisdiction * * *."

EPA argued that its comments reflected Congressional intent, a position that EPA documented through numerous references contained in the comments, as submitted to DOI. In 1980 DOI promulgated final rules to regulate air emissions from OCS activities, and simultaneously proposed a more stringent rule that would apply only to OCS sources located on the OCS adjacent to California.

In 1982, DOI withdrew the proposed rule for the California OCS and applied the national OCS rules to the OCS adjacent to California. The decision not to adopt more stringent requirements for these areas resulted in a lawsuit, *State of California* v. *Watt*, No. 81-3234-CBM (MX) (C.D. Cal). The position taken by the complainants was that the DOI rules failed to adequately protect onshore air quality and the NAAQS, and that emissions from OCS activities had a significant impact on onshore air quality. The complainants held that DOI's action created an inequitable situation whereby emissions from onshore sources were controlled more stringently than would have been necessary if OCS sources were regulated in a manner consistent with onshore requirements. This lawsuit eventually led to an attempted negotiated rulemaking.

Meanwhile, in 1983 EPA decided to require air pollution control districts (APCDs) in California to include OCS emissions in the emission inventory of their state implementation plans (SIPs). EPA's decision was based on the fact that since no natural barriers exist to prevent onshore migration of emissions from the OCS, a realistic emissions inventory must include OCS emissions. In an area designated as a nonattainment area ("NAA") under section 107(d) of the Act, the emissions inventory is used as input to a model that is used to determine the amount that emissions must be reduced in order to attain the NAAQS. It was EPA's position that any attainment demonstration would be unrealistic and unacceptable if based on an emission inventory that did not include emissions from an entire category of major sources located in the air basin. Impacts due to increases in offshore emissions had to be mitigated by decreases in onshore emissions to prevent deterioration of onshore air quality. Actual improvement in air quality had to be achieved by reducing onshore emissions even further, thus slowing onshore growth in favor of offshore development.

In 1985, still involved in litigation of the *State of California* v. *Watt*, DOI published an ANPRM (50 FR 838), in which DOI solicited information that could be used to develop emissions control requirements for OCS activities that adversely affect the onshore air quality in California. In response to comment on the 1985 ANPRM, DOI retained an independent mediator to assess the feasibility of a negotiated rulemaking. A decision was made to pursue a negotiated rulemaking with the assistance of an independent mediator. Participants in the lawsuit and other interested parties were organized into five coalitions: Federal, State, Local, Industry, and Environmental.

In 1986, DOI initiated the negotiated rulemaking process with the purpose of reaching consensus within one year on the requirements for oil and gas operations on the OCS adjacent to California. If consensus were reached, the Secretary of the Interior was prepared to publish the agreement as a Notice of Proposed Rulemaking ("NPRM"). During the course of the negotiated rulemaking, a substantial amount of valuable information was gathered and consensus was reached on many issues. However, after two and one-half years of negotiation, the coalitions were unable to produce a consensus rule, and the negotiated rulemaking was abandoned in 1988.

In 1989, DOI published an NPRM to regulate OCS activities adjacent to California. As a result of comments received on this NPRM, DOI began discussions with EPA in order to develop a more acceptable rule. These discussions continued until Congress passed the CAAA-90. Also in 1989, a Presidential Task Force was formed to investigate issues associated with the leasing and development of three specific oil and gas leases. The Task Force presented its report to the President in January of 1990. In regard to air quality, the Task Force recommended that OCS sources comply with requirements equivalent to those imposed in the adjacent onshore area.

Congress addressed these concerns in the CAAA-90. Under section 328, Congress transferred to EPA the authority to regulate OCS sources except for sources located on the OCS adjacent to the States of Texas, Louisiana, Mississippi, and Alabama, where DOI retains authority. Section 328 requires DOI to complete a study within three years to determine the impact of emissions on nonattainment areas from OCS sources under DOI jurisdiction.

C. Description of OCS Sources and Activities

Currently, OCS activity is primarily related to the exploration and recovery of oil and gas. This activity can be divided into three phases: exploration, construction, and development and production. The last two phases occur only if oil and gas can be economically extracted. The main pollutants of concern for all of these phases are NO_x and VOC.

The exploration phase consists primarily of drilling exploratory wells. The emission sources associated with this phase are drilling vessels and the crew and supply boats that support these operations. Each exploratory well drilling usually lasts 3 to 6 months.

On-site activities during the construction phase consist of the fabrication of the platform from individual, pre-fabricated pieces and installation of pipelines. It is the most equipment-intensive phase of activity. During this stage, sections of the platform are towed by barge to the site and the platform is assembled. Emission sources associated with this phase include barges, tugs, cranes, and crew and supply boats, and emissions tend to be high due to the large amount of equipment on-site. The construction phase lasts about one to three years. Much of this time is spent fabricating the jacket, deck, and platform modules on land. The time the marine construction equipment must be on the OCS location installing components is normally broken up into several relatively brief periods.

During the development and production phases, wells are drilled from the platform and oil and/or gas is produced and processed at the platform and transported onshore for further processing. These phases consist of a wide variety of emission sources: Diesel and natural gas-fired engines and turbines (for power production and compressors), stand-by generators, fugitive emissions from processing and storage, and crew and supply boat emissions. The development phase consists of drilling the production wells and lasts two to five years, during which emissions are much greater than in the production phase. The production phase may last 25 years or longer.

D. Current and Future Activities on the OCS

At the present time, most oil and gas production on the OCS occurs in the western and central Gulf of Mexico, where more than 3,000 platforms are located and which remains under the jurisdiction of the Minerals Management Service ("MMS") of DOI. There are 23 producing platforms on the OCS adjacent to California, with at least three more under construction or development. The only other activity

occurring within EPA jurisdiction is exploratory drilling on the OCS adjacent to Alaska. MMS has sold oil and gas leases on the OCS adjacent to other states, and exploration has occurred in the Atlantic and adjacent to Florida and Alaska. In Florida and North Carolina, exploratory drilling has been approved, but has not yet begun, due to either Congressional moratoria or lack of coastal consistency concurrence by the state.

The OCSLA authorizes MMS to hold lease sales to develop resources other than oil and gas. Mining of cobalt-rich manganese crusts adjacent to Hawaii is being investigated. Other possible activities being investigated for future consideration are heavy mineral mining on the OCS adjacent to Oregon and Georgia, phosphate mining adjacent to Georgia and North Carolina, gold mining adjacent to Alaska, sand and gravel mining adjacent to New England, and sand and shell mining in the Gulf of Mexico.

II. Discussion of the Proposed Regulations

A. *Section 55.1—Statutory Authority and Scope*

Section 328 of the Act makes EPA responsible for establishing requirements to regulate OCS sources of air pollution. These regulations are intended to establish the air pollution control requirements for OCS sources and the procedures for implementation and enforcement of the requirements.

B. *Section 55.2—Definitions*

A large number of existing regulations, including definitions in those regulations, have been incorporated by reference into §§ 55.13 and 55.14. Definitions that are included in regulations incorporated by reference shall apply in the context of those particular regulations to allow the incorporated requirements and permitting programs to function in their intended manner. EPA has sought to keep the definitions given in § 55.2 to a minimum to avoid inconsistencies with the definitions given by the federal, state, and local requirements incorporated into part 55. For this reason, no new definitions of "new OCS source," "existing OCS source," or "modification" have been included. Because the federal, state, and local requirements incorporated into §§ 55.13 and 55.14 define new source, existing source, and modification, language is included in §§ 55.13 and 55.14 to link the definition of OCS source to the definitions existing in the incorporated requirements.

Consistent with section 328(a)(4)(A), part 55 references the definition of OCS in the OCSLA. A brief summary of that definition is that the OCS begins at a state's seaward boundary and extends outward to the limit of U.S. jurisdiction. For states under EPA jurisdiction, states' seaward boundaries are 3 miles from the coast, except in the Gulf of Mexico offshore of Florida, where the state's seaward boundary is 3 leagues (approximately 9 miles) from the coast.

"OCS source" is defined in the statute and is limited to activities that emit or have the potential to emit any air pollutant, that are regulated or authorized under the OCSLA, and that are located on the OCS or in or on waters above the OCS. Section 328(a)(4)(C). At the present time these activities are mostly related to the exploration and development of oil and gas reserves. OCS activities include, but are not limited to: Platform and drill ship exploration, construction, development, production, processing, and transportation.

EPA is proposing to interpret the definition of "OCS source" to exclude vessels (other than drill ships, as discussed above) because they are not "regulated or authorized" under the OCSLA. Under the OCSLA, DOI may regulate "all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources." 43 U.S.C. 1333(a)(1). This language does not include vessels other than drill ships because they are not attached to the seabed, and vessels used for the transport of OCS resources are specifically excluded. Therefore, EPA is proposing not to regulate vessels as "OCS sources," and any regulations adopted by state and local agencies to directly control vessel emissions will not be incorporated into part 55 because it would exceed EPA's authority under section 328. Drill ships are considered to be an "OCS source" because they are attached, at least temporarily, to the seabed, and so are authorized and regulated pursuant to the OCSLA; as such, they will be subject to regulation as stationary sources while attached to the seabed. Vessel emissions related to OCS activity are, however, accounted for by including vessel emissions in the "potential to emit" (defined below).

The definition of "potential to emit" of an OCS source encompasses emissions from any vessel servicing or associated with an OCS source, including emissions while at the OCS source or en-route to or from the OCS source and within 25 miles of the OCS source. The inclusion of vessel emissions in the total emissions of the stationary source is a statutory requirement under section 328(a)(4)(C). In this manner vessel emissions of attainment pollutants will be accounted for when PSD impact analyses are performed and increment consumption if calculated. For nonattainment pollutants the OCS source will have to obtain offsets as required by the COA, and vessel emissions will be offset.

In addition, EPA has authority under Title II of the Act to regulate vessel emissions as mobile sources, in a manner analogous to the regulation of automobiles. Regulating vessels under Title II is more practical than regulating vessels associated with OCS sources under section 328, due to the nature of mobile sources. Regulating mobile sources on a broad scale eliminates the problems inherent in attempting to apply a patchwork of regulations. Vessels associated with OCS sources cross local, state, and international jurisdictional lines, and may even be international flag vessels. A study mandated by the Act is currently underway to determine the appropriate regulatory scheme for non-road engines, including vessels. It would be premature to develop another regulatory scheme for vessels prior to the completion of this congressionally mandated study, and would add another unnecessary layer of regulation.

Some commenters have offered another possible interpretation of section 328 regarding the regulation of marine vessels. This interpretation is based on the theory that section 328 provides for the direct regulation of pollution on the OCS, rather than the regulation of OCS sources. Specifically, section 328(a)(1) states that EPA "* * * shall establish requirements to *control air pollution* from Outer Continental Shelf sources * * *" (emphasis added). Section 328(a)(4)(C) then states that emissions from vessels "servicing or associated with an OCS source, including emissions while at the OCS source or en route to or from the OCS source within 25 miles of the OCS source shall be considered *direct emissions from the OCS source*" (emphasis added). Hence, it can be argued that EPA has authority pursuant to section 328 to regulate vessels. It then would follow that if a corresponding onshore area adopts requirements to control vessel emissions, EPA must incorporate those requirements into

§ 55.14. This interpretation appears, however, to contravene the plain language of the statute, which does not explicitly include vessels in the definition of "OCS source" but does explicitly include vessels emissions in offset calculations and impact analyses, indicating that such emissions were not intended to be regulated directly. This interpretation would also result in vessels associated with OCS sources being regulated under section 328 while other vessels would remain unregulated, and thus raising some concern with the equity of such regulation. EPA is soliciting comment on this interpretation.

C. *Section 55.3—Applicability*

OCS sources are, by definition, located between state seaward boundaries and the outer limits of United States jurisdiction. The proposed OCS rule establishes two separate regulatory regimes, as indicated by the statute. The first applies to OCS sources within 25 miles of state boundaries. These nearshore OCS sources must comply with requirements that "shall be the same as would be applicable if the source were located in the corresponding onshore area." Section 328(a)(1). EPA is proposing to read this requirement to mean that nearshore OCS sources will be subject to those federal, state, and local requirements applicable in the corresponding onshore area as of November 15, 1990 (the date that the CAAA–90, including section 328, were enacted) which are rationally related to the attainment and maintenance of federal and state ambient air quality standards and to part C of title I of the Act. For a discussion on the control of toxic air pollutants and the general applicability of the Act refer to section III.B. These requirements are set forth in proposed §§ 55.13 and 55.14 of this part. EPA will update the OCS rules to "maintain consistency with onshore regulations," as provided by section 328(a)(1), in accordance with the consistency provisions of § 55.12, discussed in Section II.L, below.

The second regulatory regime will apply to OCS sources located more than 25 miles beyond states' seaward boundaries. Because these outer OCS sources are located a considerable distance from shore, the impact of their emissions is less than if they were located within 25 miles of state boundaries. In some cases, the emissions from these sources might not affect ambient concentrations onshore. In contrast to the statutory requirements applying to sources located within 25 miles of state boundaries, section 328 does not link the requirements for OCS sources located beyond 25 miles from states' seaward boundaries to onshore requirements. The statute does, however, mandate that requirements be established to control air pollution from OCS sources. Therefore, within these bounds, the Administrator has discretion in determining the requirements for OCS sources located more than 25 miles beyond state boundaries.

EPA is proposing that sources located more than 25 miles beyond state boundaries be subject to the requirements for PSD. NSPS and NESHAPS will apply to the extent they are rationally related to protection of ambient air quality standards. When promulgated, the following federal requirements will also apply: The federal operating permit program (40 CFR part 71) and enhanced compliance and monitoring regulations promulgated pursuant to section 114(a)(3) of the Act. The application of these requirements will allow EPA to protect onshore air quality from the impacts of emissions produced by OCS sources located more than 25 miles beyond state seaward boundaries. If, due to future development of the OCS, the Administrator determines that these requirements are insufficient to protect both federal and state ambient standards, more stringent requirements will be established in a later rulemaking.

All OCS sources operating adjacent to any state other than Texas, Louisiana, Mississippi, or Alabama will be subject to requirements under one of the above regimes. OCS sources adjacent to these four states currently remain under the jurisdiction of MMS, and are not subject to the requirements of part 55. For a more detailed discussion of the requirements applicable to activities located in the nearshore and outer OCS regimes the reader is referred to II.M and II.N.

Section 328 sets compliance dates for new and existing sources. New sources must comply with this part on the date of promulgation. Existing sources must comply with this part within 24 months of the date of promulgation. For purposes of compliance with this requirement, a "new source" means an OCS source that is a new source within the meaning of section 111(a). An "existing source" means any source that is not a new source within the meaning of section 111(a). In instances when "new source" is defined in an NSPS regulation the source will not be treated as a new source, unless it is a new source within the meaning of section 111(a) pursuant to this part. NSPS regulations often define a new source as any source that was not existing at the time the NSPS was promulgated. This is to clarify that existing OCS sources will not be treated as new sources for the purpose of compliance with NSPS requirements.

D. *Section 55.4—Requirements to Submit a Notice of Intent (NOI)*

The owner or operator of a proposed new source within 25 miles of a state's seaward boundary must submit an NOI to the Administrator through the Regional EPA Office and to the air pollution control agency of the NOA and adjacent onshore areas. An NOI will include general and specific information about a proposed source, such as the proposed location and the expected emissions from the source, to determine the source's onshore impacts and the applicability of onshore requirements. The Administrator may always request additional information if necessary.

The NOI serves two purposes. First, the NOI will allow adequate time for onshore areas to determine if they will submit a request for designation as the COA. Because the NOA will automatically be designated as the COA for exploratory sources, these sources will not be required to submit any information to be used for the purpose of determining the COA (i.e. an impacts analysis). Second, the NOI will trigger an EPA review of the OCS rule to determine whether it is "consistent" with the onshore rules. If it is not, EPA will initiate a rule update for that specific COA, with the goal of making the proposed new source subject to the same requirements that would apply if it were proposing to locate in the COA. The purpose of this process is to meet EPA's obligation to maintain consistency between onshore and offshore requirements within 25 miles of state boundaries, as required by section 328(a)(1). The consistency update procedure and its statutory background are explained more completely in Section II. L.

Because the applicable regulations are likely to change, the owner or operator of the proposed source must not submit the NOI more than 18 months before submitting a permit application. This timeframe is consistent with onshore requirements related to permit applications.

E. *Section 55.5—Designation of the Corresponding Onshore Area (COA)*

Under section 328(a)(4)(B), the COA is assumed to be the NOA, but the Act gives the Administrator the authority to designate another area as the COA

under certain circumstances. The following is a description of the procedures and criteria that EPA is proposing to use for making the COA designations. Also included in this section is a proposal to designate COAs for some existing and proposed sources adjacent to California.

1. New Development and Production Sources

EPA is proposing the following procedure for the designation of the COA for new sources. The NOA will be assumed to be the COA. An area other than the NOA may submit a request to EPA to be designated as the COA for a specific OCS source within 60 days of the submission of the NOI. If no request is received by the Administrator within 60 days, the NOA will become the COA without any further action.

If an area does submit a request for designation as the COA, that request must be followed within 90 days from the submission of the NOI by a demonstration which shows:

- The requesting area has more stringent requirements than the NOA for the control of emissions from the proposed source;
- The emissions from the proposed source can reasonably be expected to be transported to the requesting area; and
- The emissions from the proposed source can reasonably be expected to hinder the efforts of the area to attain or maintain federal or state ambient air quality standards, or to comply with the requirements for PSD, taking into account the effect of air pollution control requirements that would be imposed by the NOA.

See section 328(a)(4)(B). If no demonstration is submitted within the allotted time period, the NOA will become the COA without further action. The EPA requests comment on the content of the demonstration and what criteria should be used in making the determination of "reasonably expected."

If a demonstration is submitted, the Administrator will issue a preliminary determination of the COA within 150 days from the original submittal of the NOI. The preliminary determination will be followed by a public review and comment period of 30 days. This will allow the NOA, the affected OCS source, and other interested parties adequate time to review the request and the supporting information, and provide EPA with any additional information that might have a bearing on the Administrator's decision.

The final designation will be issued within 240 days of the submission of the NOI. The Administrator will designate the COA based on all the available information. When the Administrator makes a COA designation, consideration will be given to the impact that the designation will have on the NOA. Although emissions from a source may be transported to an area with more stringent requirements, usually the emissions will reach the nearest area in greater concentration and more frequently (naturally there will be exceptions to the preceding statement, depending on the location and distance from the source to the areas in question). The Administrator's decision to designate the COA for a proposed source will be based on the relative benefits to the NOA and the requesting area. The EPA requests comment on the content and determination of what constitutes "relative benefits."

When a more stringent area is designated as the COA, EPA will issue and administer the permit. This will allow EPA to better evaluate the permit requirements that would be imposed and the possible exemptions allowed. Another advantage is that the Administrator will be able to expedite the permit process by eliminating some of the cross-jurisdictional questions which will inevitably arise with regard to the qualification of offsets and the granting of exemptions.

OCS sources that must obtain offsets will obtain them at the base rate required in the COA if the offsets are obtained landward from the site of the proposed OCS source, with no discounting of offsets or distance penalties imposed. Since the purpose of this rule is to protect onshore ambient air quality, offsets obtained closer to shore will have a greater positive impact on onshore air quality. If, however, the OCS source obtains offsets seaward from the proposed site all discounting and distance penalties required by the COA shall apply in the same manner as if the source were located in the COA. Offsets may be obtained from sources in the NOA or the COA or from OCS sources. For the purpose of providing a source of offsets, reductions from an OCS source shall be considered to be reductions from within the NOA or the COA associated with the source providing the emissions reductions.

It has been suggested that EPA make area-wide determinations of COAs. EPA does not currently have the resources or adequate data to make area-wide COA determinations. This type designation would require a comparative analysis of all the onshore coastal regulations and an evaluation of probable impact of OCS sources. All onshore regulations will be in a state of flux over the next several years due to changes mandated by the CAAA-90, so the relative stringency of onshore programs can be expected to change. The anticipated changes to onshore programs, combined with the uncertainty of the location of future OCS development, make it infeasible for EPA to make area-wide designations.

EPA is soliciting suggestions on methods that, without depriving any interested party of adequate time to provide input, streamline the procedure for designating the COA.

2. New Exploratory Sources

EPA is proposing that for new exploratory sources the NOA will be designated as the COA. It is unnecessarily burdensome to require a temporary activity such as exploration drilling, typically lasting 3 to 4 months, to an administrative process that lasts up to eight months. Moreover, it is unlikely that an activity of such limited duration would hinder the efforts of the area in question to attain or maintain ambient air quality standards, as required by both the statute and the proposed regulations in order for the Administrator to designate an area other than the COA as the NOA. Thus, EPA is proposing at this time to make a presumptive determination that the COA will be the NOA for all exploratory sources. If the exploratory operation results in proposed development and production at that site, then that proposed development and production source would be subject to the full COA designation process.

In addition to the excessive burden the COA designation process would impose on an exploratory source, there are technical reasons to simplify the process for these temporary operations. The determination of impacts onshore from an exploratory operation could be dependent on the time of year drilling was projected to occur because meteorological conditions are a key factor in determining the area of impact. Since many factors could delay drilling, including the COA designation process, the showing of onshore impacts would be time dependent, and the COA could very possibly change depending on the time of year drilling were to occur.

This is not a problem for development and production activity, where the preponderance of effects on a particular onshore area could be projected over the lifetime of the platform.

3. Existing and Currently Proposed Sources

EPA is also proposing to designate COAs for some sources offshore of California. All existing development and production platforms that will be subject

to this rule are located on the OCS adjacent to California. Existing sources have only 24 months from the date of promulgation to comply with the requirements contained in these regulations. New sources must comply immediately upon promulgation. By designating COAs for these sources on the date of promulgation, the existing sources will have adequate time to determine the applicable requirements, install necessary controls, and receive the required permits, and the proposed sources will be given early notice of the requirements with which they must comply. EPA is proposing that the NOAs for these sources become the designated COAs to facilitate timely compliance with part 55. No COA designations for OCS sources located adjacent to states other than California are being proposed at this time due to uncertainty regarding the exact location of future development.

At this time, EPA is proposing the South Coast Air Quality Management District as the COA for the following existing or proposed OCS facilities:

Edith, Ellen, Elly, and Eureka.

At this time, EPA is proposing the Ventura County Air Pollution control District as the COA for the following existing or proposed OCS facilities:

Grace, Gilda, Gail, and Gina.

At this time, EPA is proposing the Santa Barbara County Air Pollution Control District as the COA for the following existing or proposed OCS facilities:

Habitat, Hacienda, Harmony, Harvest, Heather, Henry, Heritage, Hermosa, Hidalgo, Hillhouse, Hogan, Houchin, Hondo and Irene, Iris, the OS & T, and Union A, B, and C.

In proposing the COAs for the above sources, EPA is not making or implying any decision as to whether the facility is a new source or an existing source pursuant to section 111(a) for the purposes of compliance with the requirements of this part.

If no adverse comment is received on the proposed COA for each of the above OCS sources, the COA designation will become final upon promulgation of this rule. If adverse comment is received, it must be accompanied by a request to consider another area as the COA and sufficient documentation to support the request.

F. *Section 55.6—Permit Requirements.*

Section 55.6 of this proposal contains requirements to enable EPA or a delegated agency to issue preconstruction and operating permits in accordance with onshore federal, state, and local regulations for sources within 25 miles of states' seaward boundaries. Section 55.6 also establishes federal permitting requirements for sources beyond 25 miles of a state boundary. As discussed in Section II.K, the Administrator will retain authority for the implementation and enforcement of the OCS regulations beyond 25 miles of state seaward boundaries.

This regulation proposes that approval to construct or permit to operate applications, submitted by a new or existing OCS source, must include a description of how the source will comply with all the applicable requirements. This is an established requirement of most preconstruction and operating permit programs; it ensures that the permitting agency and the applicant have identified all the requirements to which the source is subject and allows the applicant to identify any control technology requirements that the applicant believes are technically infeasible or will cause an unreasonable threat to health and safety.

A request for any exemptions from compliance with pollution control technology requirements must be submitted with the permit application to ensure that the air quality impacts and control technology requirements are properly evaluated. The Administrator, or delegated agency, will act on the request for exemption following the procedures discussed in the following Section II.G, including consultation with the MMS and the U.S. Coast Guard.

EPA is proposing that all OCS sources meet the applicable federal permitting requirements referenced in § 55.13. Under current federal law, new major stationary sources of air pollution are required to obtain air pollution permits before commencing construction, both in NAAs (areas where the NAAQS are exceeded or that contribute to NAAQS violations in nearby areas) and in areas where air quality is acceptable (attainment or unclassifiable areas). Because attainment status is evaluated separately for each criteria pollutant, an area can be both attainment and non-attainment. Therefore, a source may have to obtain both PSD and NAA permits.

In areas that meet the NAAQS a PSD program applies. Most states implement their own PSD programs that have been approved by EPA under 40 CFR 51.166 as part of the SIP. In the remaining states, the federal PSD program, which is set forth in 40 CFR 52.21 applies.

The federal non-attainment permit regulations are set forth in 40 CFR part 51 and accompanying appendix S. However, appendix S regulations only apply to areas that are newly designated NAAs and in certain other special circumstances. Most states implement their own NAA permit programs, which have been approved by EPA under 40 CFR 51.165 as part of the SIP.[1]

There is not, at this time, a federal operating permit program. 40 CFR Part 70, proposed May 10, 1991 (56 FR 21712), will contain regulations requiring states to develop and submit to EPA within 3 years of enactment, programs for issuing operating permits. If the COA does not have an approvable operating permit program, or does not adequately implement an approved program as required by part 70, the applicable requirements of part 71, the federal operating permit program, will apply to new and existing OCS sources on and after the date that part 71 becomes a requirement in the COA. As onshore, the applicable requirements of part 71 will be implemented and enforced by the Administrator. OCS sources located beyond 25 miles of a state's seaward boundary will also be subject to the requirements of part 71.

A basic requirement of section 328 is that sources located within 25 miles of a state seaward boundary meet the requirements, including permitting, that would be applicable if the source were located in the COA. As discussed in Section II.N, states and local air pollution control districts that are adjacent to OCS sources may have their own permit requirements that are not identical to federal law. Hence, these OCS sources must meet all the applicable COA permitting requirements in addition to the federal permitting requirements. The applicable state and local permitting requirements are set forth in § 55.14. The applicable federal permitting requirements are set forth in § 55.13.

Any existing source subject to the requirements of a COA with an operating permit program is subject to that program. Existing sources must be in compliance with this part within 24 months from the date of promulgation, which may include obtaining a permit to operate by that date.

EPA realizes that there may be some duplication in the federal and state permitting requirements of the OCS regulation. For example, an OCS source may be required to apply best available control technology (BACT) for a pollutant for which the COA is in

[1] Where a construction ban has been imposed by EPA under section 173(a)(4) because the SIP is not adequately implemented, EPA administers the ban under 40 CFR 52.24. 40 CFR 52.24 and appendix S would only apply on the OCS if they are required in the COA.

attainment by federal standards and may also be subject to a state or local requirement to apply lowest achievable emission rate (LAER) for the same pollutant for which the COA is in non-attainment by state air quality standards. In such a case, the source should apply the more stringent requirement, thereby meeting both requirements. This regulatory overlap currently exists onshore, where sources are required to meet all federal, state, and local permitting requirements.

EPA believes that the applicable federal, state, and local new source review requirements can be incorporated into a single preconstruction permit. There may be cases, however, in which an OCS source may need more than one preconstruction permit. This may occur when a delegated agency routinely issues a separate permit for each emissions unit at a facility, when it is necessary to issue separate PSD and NAA permits, or when the state has received partial delegation under this part, and permits are required from both EPA and the state.

Because the statute states that "requirements shall be the same as would be applicable if the source were located in the COA," EPA did not attempt to correct deficiencies in onshore permitting regulations. The Act provides other mechanisms to correct deficiencies in onshore regulations. Once a rule is changed onshore, it will become applicable to OCS sources when EPA promulgates new rules under the consistency update procedure set forth in § 55.12 and discussed in II.L.

Section 328 requires that existing sources comply with the OCS requirements within 24 months of promulgation. In order to comply, existing sources may need to modify their facilities or methods of operation. Therefore, EPA is proposing that the preconstruction requirements of § 55.6 not apply to a particular modification of an OCS source if: The modification is necessary to comply with the OCS regulation, it is made within 24 months of promulgation of the OCS regulation, and it will not result in an increase in emissions of a pollutant regulated under the Act. EPA intends that debottlenecking [2] or expansion projects performed in conjunction with modifications necessary to meet OCS requirements shall be subject to the preconstruction requirements of the OCS regulation. Sources intending to perform modifications that will be exempt from preconstruction requirements must submit a compliance plan to the Administrator or delegated agency prior to performing the modification. This will insure that the intended modification will indeed meet the onshore requirements.

For the purposes of §§ 55.4, 55.5, and 55.6, the definition of modification will be that corresponding to the applicable requirements of §§ 55.13 and 55.14. For applicability to part 55 in general, however, the definition of modification given in the Act, section 111(a), shall apply. In brief, a physical change, or change in method of operation, commenced after the publication of the proposed regulation, will make an existing OCS source a new OCS source.

Under the provisions of section 328 of the Act, the Administrator retains the authority to enforce any OCS requirement. EPA is therefore proposing that the applicant send a copy of any permit application required by this Section to the Administrator through the Regional Office at the same time the application is submitted to the delegated agency. To ensure that the delegated agency is adequately administering and enforcing the OCS requirements, EPA is also proposing that the delegated agency send a copy of any public notice, preliminary determination, and final permit action to the EPA Regional Office. These requirements are also consistent with EPA's goal of facilitating information transfer.

When issuing preconstruction or operating permits, EPA will use the applicable administrative and public notice and comment procedures of § 55.6 and 40 CFR part 124, which contain regulations on the issuance of EPA permits. Part 124 will be amended to reference the issuance of federal OCS permits. Where the Administrator delegates the OCS permitting requirements to a state or local agency, that agency must comply with the requirements of § 55.6 except for the administrative and public participation procedures of the federal rule, for which the agency may substitute its own procedures.

As with all permits issued under federal regulations or with federal authorization, an authority to construct or permit to operate does not relieve any owner or operator of the responsibilities to comply fully with applicable provisions of any other requirements under federal law, such as the National Environmental Policy Act (NEPA) or the Endangered Species Act. OCS air quality permits obtained pursuant to part 55 are not, however, subject to the environmental impact statement provisions of section 102(2)(c) of NEPA, 42 U.S.C. 4321.

G. *Section 55.7—Exemptions.*

Section 328(a)(2) allows the Administrator to grant an OCS source an exemption from a specific control technology requirement if the Administrator finds that the requirement is technically infeasible or will cause an unreasonable threat to health and safety. The Administrator must make a written finding explaining the basis of any exemption granted and impose another requirement as close in stringency to the original requirement as possible. Any increase in emissions due to the granting of the exemption must be offset by emissions reductions not otherwise required by the Act.

Items that could be considered as a basis for finding a requirement technically infeasible or an unreasonable threat to health and safety include the following:

- The equipment is used for emergency service and compliance would negatively impact the equipment's effective emergency response;
- Compliance could significantly increase the risk of ship collisions;
- Compliance would entail modifications that would compromise the structural integrity of the facility;
- Compliance would create adverse cross-media impacts that would result in health risks outweighing the benefit of the air emission reductions; or
- Compliance would result in an actual increase of emissions of non-attainment pollutants, due to the location of the OCS source.

The following example is provided to explain what might be considered a valid basis for granting an exemption based on health grounds. The application of a NO_x control could require large quantities of a chemical that must be transported to the platform by boat. The boat would emit NO_x as it cruises back and forth between port and platform. The farther the platform is from shore, the more NO_x the boat would emit. However, the NO_x reduction at the platform is the same no matter how far the boat must travel. At a certain distance from shore, the NO_x emitted by the boat would exceed the NO_x reduction achieved at the platform, and the result of applying the control would be a net increase in NO_x emissions. Thus, the imposition of the control measure is counterproductive and the resultant increased emissions of a precursor to ozone are an unreasonable threat to public health.

[2] Debottlenecking is an engineering term used to describe the removal of an impasse that limits the throughput of a process.

EPA is proposing that the procedures for granting exemptions be incorporated into the permitting process. When a source submits a permit application to the permitting agency, the application should contain a request for exemption from any requirement that the applicant believes is unsafe or technically infeasible. The request must include information that demonstrates that compliance with a requirement would be technically infeasible or cause an unreasonable threat to health and safety. The request should be accompanied by suggestions for substitute controls, an estimate of the residual emissions due to the substitutions, and preliminary information regarding the acquisition of any offset that will be required if the exemption is granted.

These offsets are required to prevent any deterioration of air quality due to the granting of the exemption. This is slightly different from the purpose of offsets required in an NAA, which must provide a "net air quality benefit" to assist the area to attain the ambient standards. For this reason, EPA has proposed two offsets ratios for sources that receive exemptions pursuant to § 55.7.

EPA is proposing that a new source or a modification that qualifies as a new source must comply with the offset ratio imposed in the COA. A new source or a modification that qualifies as a new source must comply with an offset ratio of 1:1 if offsets are not required in the COA or if the source is located beyond 25 miles from a state's seaward boundary. The purpose of these offsets is to prevent any deterioration in air quality. Existing sources must comply with an offset ratio of 1:1.

It is possible that a source may want to request an exemption in a situation where no permit application or permit amendment would be required, such as when a new regulation becomes applicable. If this situation occurs, a source may simply submit a request for exemption that includes all the information required by the Administrator or the delegated agency. The request must be submitted within 90 days from the date the requirement is promulgated by EPA. All other requirements and procedures applicable to exemption requests under this Section shall apply.

When issuing exemptions in conjunction with preconstruction or operating permits, EPA will use the applicable administrative and public notice and comment procedures of § 55.7 and 40 CFR part 124, which contain regulations on the issuance of EPA permits. Part 124 will be amended to reference the issuance of federal OCS permits. If no permit is required, EPA will use the administrative procedures of § 55.7.

The authority to grant technical and safety exemptions may be delegated to qualifying state and local agencies along with adequate regulations. EPA or the delegated agency must consult with the MMS and the U.S. Coast Guard when reviewing exemption requests. If the delegated agency, the MMS and the U.S. Coast Guard cannot reach a consensus decision on the exemption request within 90 days the request will automatically be appealed to the Administrator. The 90 day period may be extended by mutual agreement between all the involved agencies. The purpose of this consultation process is to ensure that OCS operations will proceed in a safe manner. If the involved agencies do reach a consensus decision, the delegated agency will use its own procedures to meet the obligation to allow for public notice and comment when the exemption is part of a permit application. If the exemption is requested but no permit or permit change is required, the delegated agency must comply with the requirements of § 55.7.

H. *Section 55.8 Monitoring, Reporting, Inspections, and Compliance.*

The Environment Protection Agency is authorized to require OCS sources to monitor and report emissions and certify compliance status pursuant to section 114. Section 114 states, in part, that in order to determine if any person is in violation of any standard under the Act, the "Administrator may require any person who owns or operates any emission source * * * to (A) establish and maintain such records; (B) make such reports; (C) install, use and maintain such monitoring equipment, and use such audit procedures, or methods; (D) sample such emissions * * *; (E) keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions in impractical; (F) submit compliance certifications in accordance with section 114(a)(3); * * *"

Any monitoring or reporting requirement that appears in a rule adopted pursuant to section 114, or incorporated into this rulemaking, shall also apply to OCS sources. For example, NSPS requires certain monitoring requirements that may apply to OCS sources.

Section 114(a)(3) was added by the CAAA–90 and authorizes EPA to require any person who owns or operates a major stationary source to perform enhanced monitoring and submit compliance certifications. These compliance certifications shall include "(A) identification of the applicable requirement that is the basis of the certification, (B) the method used for determining the compliance status of the source, (C) the compliance status, (D) whether compliance is continuous or intermittent, (E) such other facts as the Administrator may require." EPA is required to promulgate regulations providing guidance and implementing section 114(a)(3) by November 1992; these rules will apply to OCS sources when promulgated.

Any OCS source that is not required to obtain a permit to operate within 24 months, pursuant to the requirements of the part, must submit a compliance report to the Administrator or the delegated agency. Section 55.8 requires that a compliance report specify all the applicable requirements under this part and a description of how the source has complied with these requirements. This compliance report must be submitted within 25 months of the date of promulgation of this part. The purpose of this compliance report is to verify that the OCS source has met the statutory requirements in the absence of a permit.

When the OCS program is delegated, the delegated agency will have whatever monitoring, reporting, inspection and compliance certification authority over the OCS sources that the agency has over onshore sources. It will be the responsibility of an agency that requests delegation of the OCS program to have amended its rules to allow for authority over sources located in the OCS region within 25 miles of its state seaward boundaries.

When EPA is administering the OCS program, inspections will be performed by EPA or an authorized agent and coordinated with the MMS and the U.S. Coast Guard for safety reasons. Where the program is delegated, the delegated agency shall perform the inspections, also in coordination with the MMS and the U.S. Coast Guard. Coordination with these agencies shall not be allowed to hinder the ability of the EPA or the delegated agency to conduct surprise inspections.

I. *Section 55.9 Enforcement.*

Section 111(e) states that it shall be unlawful for any owner or operator of any new source to operate such source in violation of any performance standard of the NSPS program. Since section 328(a)(1) provides that the OCS requirements are to be considered as standards of performance under section 111, and since section 328(a)(1) also

provides that violations of the OCS requirements shall be considered violations of section 111(e), it shall also be unlawful for any owner or operator of an OCS source to operate such source in violation of the OCS regulations.

EPA has a variety of enforcement tools under the Act that apply to OCS sources. Section 113 authorizes the Administrator to bring administrative and civil actions to prohibit sources from violating the requirements of the Act and to collect penalties for non-compliance. Section 113 also provides for criminal penalties for knowing violations of the Act. As discussed in II.H., section 114 provides authority to obtain information to determine the compliance status of sources. Section 120 provides authority to assess non-compliance penalties. Section 303 provides for emergency powers when a pollution source is presenting an imminent and substantial endangerment to public health or welfare or the environment. All of these sections apply to OCS sources.

Under a delegated program, the state or local agency shall have the enforcement authority that it possesses under state or local laws. The state or local agency shall be responsible for amending its laws to provide for authority to enforce the OCS regulations within 25 miles of the state's seaward boundaries.

If a facility is ever ordered to cease operation of any piece of equipment due to an enforcement action taken pursuant to this part by EPA or a delegated agency, the actual shut-down will be coordinated by the enforcing agency with the MMS and the U.S. Coast Guard. In no case shall the consultation process delay the initiation of the shut down by more than 24 hours.

J. *Section 55.10 Fees.*

If EPA implements the requirements of the COA, EPA will charge fees under the operating permits fee schedule established pursuant to 40 CFR part 71 when promulgated, for all OCS sources subject to the requirements of part 71. For those OCS sources not subject to the requirements of part 71, and for all OCS sources before such time as the permit fee regulations in part 71 are promulgated, EPA will charge fees in accordance with the fee schedule imposed in the COA, with the following proviso: To the extent the fees in the COA are based on regulatory objectives, such as discouraging emissions, EPA will collect fees in accordance with the fee schedule imposed in the COA; to the extent the fees in the COA are based on cost recovery, EPA will cap such fees at an amount equal to EPA's cost to issue and administer the permit. Upon delegation of authority to implement and enforce any portion of this part, EPA will cease to collect the fees associated with that portion of this part, and the delegated agency will calculate and collect fees in accordance with the fee schedules imposed in the COA.

K. *Section 55.11 Delegation.*

Section 328(a)(3) provides that each state whose seaward boundary is adjacent to a nearshore OCS source subject to the requirements of section 328(a) may, if that state so chooses, promulgate and submit to EPA state regulations for implementing and enforcing the nearshore OCS requirements of section 328(a). Pursuant to section 328(a)(3), EPA will carefully review any state enforcement regulations and authorities and if EPA determines that such plan is adequate to insure implementation and enforcement of the standards of section 328(a) and is consistent with such standards, EPA shall defer to the state for implementation and enforcement.

Section 328(a)(3) states that EPA shall "delegate" its enforcement authority to the state if EPA finds that the state's enforcement plan is "adequate." At the same time, however, section 328(a)(3) expressly preserves EPA's full authority to enforce the requirements of section 328. There is therefore an ambiguity in the statute; EPA cannot both delegate and retain its enforcement authority. Because the enforcement of federal law by state officials who are not officers of the United States raises constitutional concerns, EPA proposes to define "adequate" to include the requirement that a state enforcement plan be promulgated pursuant to a state law that expressly references or incorporates the standards and requirements adopted by EPA under section 328(a). In determining whether a state enforcement plan is promulgated pursuant to state law—a prerequisite to its adequacy—EPA will find it sufficient if the state submits a legal opinion of the attorney general of the state that the laws of the state provide adequate authority to carry out the plan of enforcement and that the standards of section 328(a)(1) have been adopted as state law.

The mere fact that a state will be enforcing state law does not, however, give the state the authority to change the OCS rule independent of EPA. The statute allows delegation of implementation and enforcement authority, but not rulemaking authority. If a state wants to change the OCS requirements, the state must first change the relevant onshore law. EPA will then update the OCS rule to "maintain consistency with onshore regulations," as provided by section 328(a)(1) and § 55.12, and as discussed further in II.L. This process can be less time-consuming than may first appear if, when the state adopts a change to an onshore regulation, the state conditions its application to OCS sources on EPA's adoption of the measure into federal law. Then, when the measure is adopted into federal law, the rule will immediately be enforceable under state law.

One complication in the process to delegate the OCS program is that section 328(a)(3) states that a state "adjacent to an OCS source" may promulgate and submit to the Administrator regulations in order to receive delegation of the OCS program. This implies that a state must have at least one source on the OCS adjacent to the state before adopting the regulations. As a practical matter, EPA will not delegate the program to a state that does not have an OCS source adjacent to it.

To receive delegation, the governor of a state, or the governor's designee, must request delegation of the OCS program from EPA and demonstrate that the state has:

- An adjacent OCS source.
- Adopted the OCS regulations.
- Adequate authority to implement and enforce the regulations.
- Adequate resources to implement and enforce the OCS regulations.

As discussed above, the second and third requirements may be satisfied by a legal opinion of the state attorney general.

EPA will maintain authority to enforce all air pollution control requirements applicable to any nearshore OCS source under section 328(a), and may promulgate regulations governing such enforcement. EPA will closely monitor all enforcement efforts undertaken by state agencies pursuant to section 328(a)(3). If EPA determines that such efforts fail or are likely to fail to adequately implement the standards of section 328(a) with respect to any OCS source or that such efforts are inconsistent with the standards of section 328(a), EPA will assume the enforcement and implementation of section 328(a) through part 55. Similarly, EPA will assert its enforcement authority if at any time EPA determines that the state agency lacks sufficient authority to undertake such efforts.

EPA may delegate part of the OCS program to a state while still retaining other parts of the program. This partial delegation may be necessary, for example, in areas that do not have

delegation of certain onshore federal programs such as PSD.

The authority to implement and enforce §§ 55.5, 55.11, and 55.12, will not be delegated. Section 55.5 contains the procedures and requirements for designation of the corresponding onshore area, § 55.11 contains the procedures and requirements for the delegation of authority to the States, and § 55.12 contains the procedures under which EPA will perform the consistency updates required by the statute. These sections specifically address the duties of EPA and the Administrator under section 328 and are not considered part of the authority to implement and enforce the OCS program.

EPA will rescind delegation of the OCS program or any part of the OCS program which has been delegated if the delegated agency does not adequately implement and enforce the OCS program. This includes administering the program in such a way as to prevent OCS sources from operating, unless the OCS source has been found to be in violation of part 55.

EPA is proposing to retain the authority to implement and enforce the program beyond 25 miles from states' seaward boundaries for several reasons. First, state and local agencies would have to adopt and implement two programs: The onshore program which would apply to OCS sources within 25 miles of state boundaries, and a second program applicable to OCS sources located beyond 25 miles from the state boundaries. Secondly, as the distance from shore increases, it is increasingly difficult to make a COA designation which is technically defensible. EPA does not believe that Congress intended EPA to delegate to states the authority to regulate areas up to 200 miles or more outside their boundaries.

L. *Section 55.12 Consistency Updates.*

Because onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements "as necessary to maintain consistency with onshore regulations." The statute uses the phrase "the same as" to describe the OCS requirements initially adopted (Section II.C) and uses the phrase "maintain consistency" in directing EPA to perform updates. This reflects a difference in the way rules in effect as of the date of enactment, and rules adopted after enactment, are to be treated.

The words "the same as" require that EPA include in the OCS regulations those onshore requirements determined to be applicable, and that were in effect, as of the date the CAAA–90 were enacted. The fact that the statute directs EPA to update the OCS requirements, rather than automatically incorporating new onshore requirements, and the use of the phrase "maintain consistency" rather than the phrase "the same as," implies that EPA's action in adopting "post-enactment" requirements must be more than rubber stamping a state or local rule into federal law. EPA proposes to interpret "maintain consistency" to mean that EPA will incorporate into part 55 those onshore rules which comply with the statutory requirements of section 328, are equitable and are rationally related to the attainment and maintenance of ambient air quality standards and the prevention of significant deterioration of air quality. These criteria are mandated by the general prohibition against arbitrary and capricious rulemaking with which the Administrator must comply in any rulemaking proceeding, under either section 307(d) of the Act or under the Administrative Procedures Act. They also comport with the general intent of the legislation to ensure equity between onshore and OCS sources. In determining whether an onshore rule is inequitable, even if no onshore sources would be controlled by a regulation adopted by a state such that only OCS sources would be affected, EPA will not consider the rule to be inequitable or arbitrary and capricious if the rule is consistent with the state's general approach to onshore regulation.

Updates also will address the requirements for areas that have not had previous OCS development. MMS publishes an inclusive five-year leasing plan that describes every proposed lease sale and an Environmental Impact Statement (EIS) must be prepared for each lease sale. EPA and interested parties will therefore have considerable notice if a new area is to become subject to exploration and/or development. EPA is proposing to promulgate OCS requirements for new areas as needed and will assure that regulations are in place in a timely manner so as not to impede the commencement of any OCS activity.

EPA is proposing to periodically update part 55 to reflect onshore rule changes that may affect OCS sources. This update will be done in accordance with notice and comment rulemaking procedures. EPA is soliciting comments on the appropriate time period to update the rule. One option is to link the consistency updates solely to the submittal of NOIs. Section II.D. of the preamble proposes that the submission of an NOI will trigger a review of the onshore rules to determine if an update is necessary. Upon submission of an NOI, EPA will compare onshore rules with the requirements of part 55. If the requirements of part 55 are found to be inconsistent with the current onshore requirements, EPA will expeditiously initiate a consistency update. A second option is to update part 55 annually. Under this option, part 55 would be evaluated on a yearly basis, with NOIs triggering early review.

Consistency updates will be performed using standard procedures for notice and comment rulemaking. Consistency updates may result in the inclusion of State or local rules or regulations into part 55 that will ultimately be disapproved as part of the SIP. Inclusion in the OCS rule does not imply that a regulation meets the requirements of the Act for SIP approval, nor does it imply the regulation will be approved by EPA for inclusion in the SIP. For additional discussion of this topic, see Section III.A.2.

M. *Section 55.13 Applicable Federal Requirements.*

Section 328 directs EPA to establish air pollution requirements for OCS sources. The statute specifies that for sources located within 25 miles of states' seaward boundaries, those requirements shall be the same as the requirements in the COA (see section II.A.). Section 328 does not mandate the content of the OCS program for OCS sources located beyond 25 miles of states' seaward boundaries. Therefore, within the framework of establishing requirements to "attain and maintain federal and state ambient standards and to comply with the provisions of part C of title 1," EPA has some latitude in establishing the requirements under Section 328 that apply to sources located beyond 25 miles from states' seaward boundaries.

In this rulemaking, EPA is proposing to apply PSD., and to the extent they are rationally related to protection of ambient air quality standards NSPS and NESHAPS. When promulgated the requirements of the federal operating permits program to outer OCS sources. These regulations will be implemented in accordance with EPA guidance. The requirements of § 55.13 apply to both nearshore and outer OCS sources. Nearshore sources must also meet the requirements of the COA, as set forth in § 55.14.

At present, there are few (if any) outer OCS sources within EPA jurisdiction and none are permanent. In the future, OCS sources may be established at distances of 28 miles to more than 200 miles offshore. Because of the uncertainty of where new sources will

be located, EPA cannot predict the impact these sources will have on onshore air quality. If the Administrator determines that additional requirements for outer OCS sources are necessary to protect onshore air quality, such requirements will be promulgated in a future rulemaking. This might occur for instance, if the density of OCS sources in a specific area cumulatively causes negative impacts to onshore air quality.

N. *Section 55.14 Applicable Requirements of the COA.*

The requirements of this Section apply only to those sources located within 25 miles of states' seaward boundaries. Section 328 mandates that sources located within 25 miles of states' seaward boundaries be subject to requirements that are the same as would be applicable if the source were located in the COA. Section 328(a)(1) provides that within 25 miles of state boundaries, requirements "shall include, but not be limited to, State and local requirements for emission controls, emission limitations, offsets, permitting, monitoring, testing, and reporting."

States have independent authority to establish air pollution regulations that apply within their jurisdiction. In many states, air pollution control regulations are established by a state agency responsible for air pollution control. In other states, particularly California, primary responsibility for regulation of air quality lies with local air pollution control districts. State law authorizes these air pollution control districts to adopt, implement, and enforce air quality regulations. In order to be considered by EPA for inclusion in the OCS rule, state and local requirements must have been formally adopted by the appropriate regulatory agency.

Because requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be "the same as" or "consistent with" onshore requirements, EPA has little flexibility in establishing requirements that apply to these OCS sources.

A large number of onshore rules, such as those regulating agricultural burning or automobile refinishing do not apply on the OCS. To reduce paperwork and the expense of promulgating rules, EPA is proposing to limit the scope of this promulgation to those rules that control sources that exist or could reasonably be expected to exist on the OCS and be regulated or authorized under the OCSLA. EPA has examined federal, state and local law to determine which onshore requirements could be applied offshore. Where possible, EPA has limited the state and local rules incorporated into part 55 to those that contain requirements that apply to OCS sources.

State and local administrative and procedural rules, such as those establishing hearing board procedures, have generally been excluded.[3] In some instances, however, individual rules contain administrative procedures along with the substantive requirements that section 328 directs EPA to promulgate. Where it was not feasible to separate the extraneous provisions from the necessary requirements, EPA has included both. In order to insure that EPA will not be required to adhere to state or local administrative or procedural requirements when implementing the OCS rule, § 55.14 explicitly states that EPA will not be bound by state or local administrative procedures. Instead, EPA will use the administrative procedures set forth in part 55 (excluding § 55.14), in 40 CFR part 124, and in rules promulgated pursuant to title V of the CAAA-90, as such rules apply in the COA.

If an onshore rule that would be applicable to a proposed OCS source is not currently incorporated into part 55, EPA will initiate a consistency update, as triggered by the submission of an NOI. This procedure is discussed in Section II.D.

Before a rule or regulation may be applied to OCS sources, it must be incorporated into part 55 by formal rulemaking. EPA proposes to include in this rule a few rules that were adopted by states or locals after November 15, 1990. Rules and rule revisions adopted by states subsequent to the date of enactment are subject to EPA consistency update requirements (see Section II.L.). In this rulemaking, therefore, EPA is doing both an initial rule adoption and a consistency update to incorporate state rules adopted after November 15, 1990.

Promulgation of OCS regulations entails the incorporation of requirements from up to three layers of law—Federal, State, and local—into one layer—40 CFR part 55. Because of this structure, it is inevitable that some overlap will exist. Onshore, sources must meet applicable federal requirements as well as State and local requirements. The difference is that the overlap does not exist within one body of law. In cases where OCS requirements overlap, the source must comply with all requirements, just as onshore sources must.

It is conceivable that a situation could arise where it is impossible for a source to comply with different versions of the same requirement. A conflict within the OCS regulation would complicate enforcement on the OCS because, unlike onshore, the conflict would exist within a single body of law. EPA has not discovered any such conflicts in the rules it has reviewed. However, if EPA identifies a conflict between a federal, state, or local requirement, EPA will analyze the rules and incorporate the version that will result in the greatest emission reductions. Strictly speaking, this could create a regulatory environment for the OCS that is not "the same as" the onshore environment. This is an artifact of the process of combining three layers of law into a single layer. As noted above, EPA has not found any conflicts between Federal, State, and local requirements.

EPA is proposing to incorporate the rules listed in the regulation that follows this preamble. The text of the rules is in the technical support document, which is part of the docket and is available at the addresses listed at the beginning of this notice.

III. Additional Topics for Discussion

A. *Relationship Between the OCS Regulations and the State Implementation Plans*

1. Emission Inventories/Attainment Demonstrations

OCS emissions will be treated in a manner consistent with EPA emission inventory guidance and are to be included in the SIP baseline emission inventory of the COA. Upon promulgation by EPA, to the extent a rule meets EPA's criteria for creditability under SIP policy, emission reductions realized by implementation of OCS rules may be used for attainment demonstrations or to meet emission reduction targets.

2. Deficiencies Incorporated Into the OCS Rule

Section 328(a) requires that EPA establish requirements to control OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. Because the statute mandates that requirements for these sources must be the same as the COA's onshore requirements, EPA must adopt a COA's rules into OCS law as they exist onshore. This limits EPA's flexibility in deciding which rules will be incorporated into part 55, and prevents EPA from making substantive changes to the rules it incorporates. As a result, EPA is proposing to incorporate into part 55 several rules that do not

[3] Upon delegation, states may use their administrative rules to implement and enforce OCS requirements, as appropriate.

conform to all of EPA's SIP guidance or certain requirements of the Act.

The following are examples of how rules may deviate from EPA SIP guidance or requirements of the Act:

- Section 172(c)(1) requires that NAAs adopt rules that require the application of reasonably available control technology (RACT). In some cases the rules proposed for inclusion in this promulgation are less stringent than RACT requirements.
- EPA has issued extensive guidance relating to SIP rules. Much of that guidance was summarized in appendix D of EPA's proposed post-1987 policy (52 FR 45044, November 24, 1987), and in a "bluebook" which elaborated on that guidance. Section 182(a)(2)(A) essentially requires most nonattainment areas to meet the preenactment VOC-RACT requirements as set forth in this guidance. Some rules that are proposed for inclusion in this promulgation do not meet all of EPA's guidance. For example, some rules do not specify EPA approved test methods or do not have adequate recordkeeping requirements.

The promulgation of OCS rules superficially resembles the SIP process. Rules that are presently in the SIP or rules that may eventually be included in the SIP are proposed for inclusion into part 55. However, SIP rules and OCS rules are subject to different standards. The net result is that rules promulgated as OCS law may contain deficiencies that would result in less than full approval for inclusion in the SIP. EPA is currently working with states to correct deficient rules. As corrections are adopted onshore, EPA will incorporate them into the OCS rule through the consistency update process.

It must be emphasized that promulgation of a state or local rule as OCS law does not constitute or imply approval of that rule as part of the SIP. Nor does it preclude any action EPA may take in regard to deficient onshore SIPs.

B. *The Applicability to OCS Sources of Regulations Controlling Air Pollutants that are not Significantly Related to a State or Federal Ambient Standard*

Section 328(a) requires the Administrator to promulgate requirements for OCS sources "to attain and maintain Federal and State ambient air quality standards and to comply with the provisions of part C of title I of the Act." EPA reads this provision as a restriction on EPA's authority to regulate OCS sources. Specifically, in today's rulemaking EPA is proposing to regulate only federal and state criteria pollutants and precursors to those pollutants.[4]

Although it may be argued that this approach will result in inconsistencies between the regulation of onshore and offshore sources, which section 328 was intended to remove, EPA believes that this interpretation of the statute is the better reading of the plain language of the statute. Moreover, in providing for equity between onshore and offshore sources, the statute states that "such requirements shall be the same as would be applicable if the source were located in the corresponding onshore area," where "such" refers back to "requirements * * * to attain and maintain Federal and State ambient air quality standards," thus similarly restricting the application of onshore requirements.

EPA recognizes, however, that this interpretation results in a gap in the regulatory scheme. Although non-criteria pollutants are not a significant concern with respect to current OCS activities, they could become so in the future. For example, possible gold dredging on the OCS could emit cyanide and mercury that can be regulated under section 112 of the Act but are not criteria pollutants or precursors and so would not be regulated on the OCS under section 328(a).[5] With respect to air pollutants other than those specifically addressed under section 328(a), EPA may have authority to apply the Act generally to the OCS, since the OCS is an area of federal jurisdiction and the Act in general applies to "the Nation's air resources." Section 101(b). In addition, the OCSLA itself provides that all federal laws shall apply on the OCS "to the same extent as if the OCS were an area of exclusive federal jurisdiction located within a state." Section 4(a)(1), 43 U.S.C. 1333(a)(1). EPA is requesting comment on this interpretation.

IV. Administrative Requirements

A. *Executive Order 12291*

Executive Order 12291 requires that all federal agencies prepare a regulatory impact analysis for major rules. Major rules are those that may likely result in any of the following:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions;

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA performed a Regulatory Impact Analysis Screening that is available in the docket, that indicates that the proposed rule results in an impact of less than $3 million per year and therefore, EPA believes this rule is not a major rule. This result is dependent on the analytic methodology used and on assumptions having a high degree of uncertainty. EPA invites comment on the Screening Analysis, its assumptions and methodology. This rulemaking is not anticipated to meet the last two criteria listed above due to the small number of entities to be affected.

B. *Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 requires each federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities."

The EPA certifies that the proposed rule will not have a significant impact on a substantial number of small entities. A census of companies directly affected by the proposed regulations reveals that none meet the criteria of small according to the Small Business Administration (SBA).

C. *Paperwork Reduction Act*

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1601.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch (PM-223Y), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 or by calling (202) 260-2740.

Public Reporting Burden for this collection of information is estimated to be an average of 360 hours per response for new sources and 310 hours per response for existing sources. This burden includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the

[4] The pollutants for which federal ambient air quality standards exist are ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, lead, and particulate matter (as PM-10). See 40 CFR part 50. Some states have adopted additional ambient air quality standards.

[5] Section 112 requires EPA to develop regulations for approximately 200 hazardous air pollutants for which there are no Federal ambient air quality standards.

collection of information and compliance testing.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, EPA, 401 M Street, SW. (PM-223Y), Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for the EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 55

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Particulate matter, Hydrocarbons, Nitrogen oxides, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 22, 1991.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended by adding a new part 55 as follows.

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

Sec.

Authority: 42 U.S.C. 7401, *et seq.*

§ 55.1 Statutory authority and scope.

Section 328 of the Clean Air Act (the Act) (42 U.S.C. 7401, *et seq.*), as amended by Public Law 101-549, the Clean Air Act Amendments of 1990, authorizes EPA to establish requirements to regulate outer continental shelf ("OCS") sources of air pollution, in order to attain and maintain ambient air quality standards and comply with the provisions of part C of title I of the Act. This part establishes the air pollution control requirements for OCS sources and the procedures for implementation and enforcement of the requirements, consistent with the requirements of section 328.

§ 55.2 Definitions.

Administrator means the Administrator of the U.S. Environmental Protection Agency.

Corresponding Onshore Area ("COA") means, with respect to any OCS source located within 25 miles of states' seaward boundaries, the onshore area that is geographically closest to the source or another onshore area that the Administrator designates as the COA, pursuant to § 55.5 of this part.

Delegated Agency means any agency that has been delegated authority to implement or enforce the requirements of this part by the Administrator, pursuant to § 55.11 of this part.

Exploratory Source means any temporary operation conducted for the sole purpose of gathering information.

Nearest Onshore Area ("NOA") means, with respect to any OCS source, the onshore area is geographically closest to that source.

OCS Source means any equipment, activity, or facility which:

(a) Emits or has the potential to emit any air pollutant;

(b) Is regulated or authorized under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*); and

(c) Is located on the OCS or in or on waters above the OCS.

Outer Continental Shelf shall have the meaning provided, as of the date of promulgation of this part, by section 2 of the OCS Lands Act.

Onshore Area means a coastal area designated as an attainment, nonattainment, or unclassifiable area by EPA in accordance with section 107 of the Act.

Potential Emissions means the maximum emissions of a pollutant from an OCS source operating at its design capacity. Any physical or operational limitation on the capacity of a source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as a limit on the design capacity of the source if the limitation is federally enforceable. Pursuant to section 328, emissions from vessels servicing or associated with an OCS source shall be considered direct emissions from such a source while at the source, and while en-route to or from the source when within 25 miles of the source, and shall be included in the "potential to emit" for an OCS source. This definition does not alter or affect the use of this term for any other purposes under §§ 55.13 or 55.14 of this part, except that vessel emissions must be included in the "potential to emit" as used in §§ 55.13 and 55.14 of this part.

Residual Emissions means the difference in emissions from an OCS source if it applies the control requirement(s) imposed pursuant to § 55.13 and/or 55.14 of this part and emissions from that source if it applies a substitute control requirement pursuant to an exemption granted under § 55.7 of this part.

§ 55.3 Applicability.

(a) This part applies to all OCS sources except those located in the Gulf of Mexico west of 87.5 degrees longitude.

(b) OCS sources located within 25 miles of a state boundary shall be subject to all the requirements of this part which include, but are not limited to, the federal requirements as set forth in § 55.13 of this part, and the state and local requirements of the COA (designated pursuant to § 55.5 of this part), as set forth in § 55.14 of this part.

(c) OCS sources located beyond 25 miles of a state seaward boundary shall be subject to all the applicable requirements of this part, except the requirements of § 55.14 of this part.

(d) New OCS sources shall comply with the requirements of this part on the date of promulgation of this part, as mandated by section 328, where a "new OCS source" means an OCS source that is a new source within the meaning of section 111(a).

(e) Existing sources shall comply with the requirements of this part within 24 months after the date of promulgation of this part, as mandated by section 328 of the Act, where an "existing OCS source" means any source that is not a new source within the meaning of section 111(a).

§ 55.4 Requirements to submit a notice of intent.

(a) Not more than 18 months prior to submitting an application for a preconstruction permit, the applicant shall submit a Notice of Intent ("NOI") to the Administrator through the Regional Office, and to the air pollution control agencies of the NOA and onshore areas adjacent to the NOA. This requirement applies only to new sources located within 25 miles of states' seaward boundaries.

(b) The NOI shall include the following:

(1) General company information, including company name and address,

owner's name and agent, and facility site contact.

(2) Facility description in terms of the proposed process and products, including identification by Standard Industrial Classification Code.

(3) Estimate of the proposed project's potential emissions of any air pollutant, expressed in total tons per year and in such other terms as may be necessary to determine the applicability of requirements of this part. Potential emissions for the project must include all vessel emissions associated with the proposed project in accordance with the definition of potential emissions in § 55.2 of this part.

(4) Description of all emissions points including associated vessels.

(5) Estimate of quantity and type of fuels and raw materials to be used.

(6) Description of proposed air pollution control equipment.

(7) Proposed limitations on source operations or any work practice standards affecting emissions.

(8) Other information affecting emissions, including where applicable, information related to stack parameters (including height, diameter, and plume temperature), flow rates, and equipment and facility dimensions.

(9) Such other information as may be necessary to determine the applicability of onshore requirements.

(10) Such other information as may be necessary to determine the source's impact in onshore areas. Exploratory sources shall be exempt from this requirement.

§ 55.5 Corresponding onshore area designation.

(a) *Proposed Exploratory Source.* The NOA shall be the COA for exploratory sources as defined in § 55.2 of this part.

(b) *Requests for Designation.* (1) The chief executive officer of the air pollution control agency of an area that believes it has more stringent air pollution control requirements than the NOA for the proposed OCS source may submit to the Administrator a request to be designated as the COA. The request must be received by the Administrator within 60 days of the submission of the NOI. If no requests are submitted, the NOA will become the designated COA without further action, 61 days after the submission of the NOI.

(2) No later than 90 days after the submission of the NOI, a demonstration shall be submitted to the Administrator showing that:

(i) The area has more stringent requirements with respect to the control and abatement of air pollution than the NOA;

(ii) The emissions from the source are or would be transported to the requesting area; and

(iii) The transported emissions would affect the requesting area's efforts to attain or maintain a federal or state ambient air quality standard or to comply with the requirements of part C of title I, taking into account the effect of air pollution control requirements that would be imposed if the NOA were designated as the COA.

(c) *Determination by the Administrator.* (1) If no demonstrations are submitted to the Administrator within 90 days of the submission of the NOI, the NOA will become the COA 91 days after the submission of the NOI without further action.

(2) If one or more demonstrations are submitted, the Administrator will issue a preliminary designation of the COA within 150 days of the submission of the NOI, which shall be followed by a 30 day public comment period, in accordance with § 55.5(e) of this part.

(3) The Administrator will designate the COA for a specific source within 240 days of the submission of the NOI.

(4) When the Administrator designates a more stringent area as the COA with respect to a specific OCS source, EPA will issue the permit and implement and enforce the requirements of 40 CFR part 55.

(d) *Offset Requirements.* Offsets shall be acquired in accordance with the requirements imposed in the COA, but no discounting or penalties associated with distance between the proposed source and the the source of emissions reductions shall apply to offsets obtained on the coastal side of a line drawn through the proposed source parallel to the coastline. Offsets obtained on the seaward side of this line will be subject to all the requirements of the COA, including any discounting and distance penalties. Offsets may be obtained in the COA or the NOA, and/or from OCS sources with the same COA or NOA as the proposed source, notwithstanding any geographic restrictions contained in the offset requirements of the COA.

(e) *Authority to Designate the COA.* The authority to designate the COA for any OCS source shall not be delegated, but shall be retained by the Administrator.

(f) *Administrative Procedures and Public Participation.* The Administrator will use the following public notice and comment procedures for processing a request for COA designation under this section:

(1) Within 60 days from receipt of a demonstration, the Administrator shall:

(i) Make available in at least one location in the NOA and in the area requesting COA designation, a copy of all materials submitted by the requester, a copy of the Administrator's preliminary determination, and a copy or summary of other materials, if any, considered by the Administrator in making his preliminary determination; and

(ii) Notify the public, by prominent advertisement in a newspaper of general circulation in the NOA and the area requesting COA designation, of the opportunity for written public comment on the information submitted by the requester and the Administrator's preliminary COA designation.

(2) A copy of the notice required pursuant to § 55.4(e) of this part shall be sent to the requester and to officials and agencies having jurisdiction over the area nearest to the OCS source as follows: State and local air pollution control agencies, and the chief executive of the city and county; the Federal Land Manager of any adjacent Class I areas; and the Indian governing body whose lands may be affected by emissions from the OCS source.

(3) Public comments submitted in writing within 30 days after the date the public notice is made available shall be considered by the Administrator in making his final decision on the request. All comments shall be made available for public inspection. At the time that a final decision is issued, the Administrator shall issue a response to comments.

(4) The Administrator shall make a final COA designation within 60 days after the close of the public comment period. The Administrator shall notify, in writing, the requester and each person who has requested notice of the final action and shall set forth his reasons for the determination. Such notification shall be made available for public inspection.

§ 55.6 Permit requirements.

(a) General Provisions. (1) *Source information.* (i) The owner or operator of an OCS source shall submit to the Administrator or delegated agency all information necessary to perform any analysis or make any determination required under this section.

(ii) Any application submitted pursuant to this part by an OCS source shall include a description of all the requirements of this part that the applicant believes, after diligent research and inquiry, apply to the source and a description of how the source will comply with the applicable requirements.

(2) *Exemptions.* When an applicant submits any approval to construct or permit to operate application to the Administrator or delegated agency it shall include a request for any exemptions from compliance with a pollution control technology requirement that the applicant believes is technically infeasible or will cause an unreasonable threat to health and safety. The Administrator or delegated agency will act on the request for exemption under the procedures established in § 55.7 of this part.

(3) *Administrative Procedures and Public Participation.* The Administrator will follow the applicable procedures of 40 CFR part 124 in processing applications under this section.

(4) *Source Obligation.* (i) Any owner or operator who constructs or operates an OCS source not in accordance with the application submitted pursuant to part 55, or with the terms of any approval to construct or permit to operate, or any owner or operator of a source subject to the requirements of this part who commences construction after the effective date of this part without applying for and receiving approval hereunder, shall be in violation of this part.

(ii) Receipt of an approval to construct or a permit to operate from the Administrator or delegated agency shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of any other requirements under federal law.

(5) *Delegation of Authority.* If the Administrator delegates any of the responsibility for implementing and enforcing the requirements of this section to any state or local agency, the following provisions shall apply:

(i) The applicant shall send a copy of any permit application required by this section to the Administrator through the Regional Office at the same time as the application is submitted to the delegated agency.

(ii) The delegated agency shall send a copy of any public comment notice required under this Section to the Administrator through the Regional Office.

(iii) The delegated agency shall send a copy of any preliminary determination and final permit action required under this Section to the Administrator through the Regional Office on the date of the determination and shall make available to the Administrator any materials used in making the determination.

(b) Preconstruction Requirements for OCS Sources Located Within 25 Miles of a State Seaward Boundary.

(1) No OCS source to which the requirements of §§ 55.13 through 55.14 of this part apply shall begin actual construction without a permit that requires the OCS source to meet those requirements.

(2) The applicant may be required to obtain more than one approval to construct permit, if necessitated by partial delegation of this part or by the requirements of this section and §§ 55.13 and 55.14 of this part.

(3) An approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The 18 month period may be extended upon a showing satisfactory to the Administrator or the delegated agency that an extension is justified. The requirement shall not supersede a more stringent requirement under §§ 55.13 or 55.14 of this part.

(4) Any preconstruction permit issued to a new OCS source or modification shall remain in effect unless and until it expires under paragraph (b)(3) of this section or is rescinded under the applicable requirements listed in §§ 55.13 and 55.14 of this part.

(5) Whenever any proposed OCS source or modification to an existing OCS source is subject to action by a federal Agency that might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321), review by the Administrator conducted pursuant to this section shall be coordinated with the environmental reviews under that Act to the extent feasible and reasonable.

(6) The Administrator or delegated agency and the applicant shall provide written notice of any permit application from a source, the emissions from which may effect a Class I area, to the Federal Land Manager charged with direct responsibility for management of any lands within the Class I area. Such notification shall include a copy of all information contained in the permit application and shall be given within 30 days of receipt of the application and at least 60 days prior to any public hearing on the preconstruction permit.

(7) The preconstruction requirements above shall not apply to a particular modification, as defined in § 55.13 or 55.14 of this part, of an existing OCS source if:

(i) The modification is necessary to comply with this part, and no other physical change or change in the method of operation is made in conjunction with the modification;

(ii) The modification is made within 24 months of promulgation of this part; and

(iii) The modification does not result in an increase in potential emissions or actual hourly emissions of a pollutant regulated under the Act.

(8) Sources intending to perform modifications that meet all of the criteria of § 55.6(b)(7) of this part shall submit a compliance plan to the Administrator or delegated agency prior to performing the modification. The compliance plan shall describe the schedule and method the source will use to comply with the applicable OCS requirements within 24 months.

(c) Operating Permit Requirements for Sources Located Within 25 Miles of a State Seaward Boundary.

(1) All applicable operating permit requirements listed in this section and §§ 55.13 and 55.14 of this part shall apply to OCS sources.

(2) The Administrator or delegated agency shall not issue a permit to operate to an existing OCS source that has not demonstrated compliance with all the applicable requirements of this part.

(3) If the COA does not have an approvable operating permit program or does not adequately implement an approved program as required by 40 CFR part 70,[1] the applicable requirements of 40 CFR part 71,[2] the federal permitting program, shall apply to OCS sources on and after the date that 40 CFR part 71 becomes a requirement in the COA. The applicable requirements of 40 CFR part 71 will be implemented and enforced by the Administrator.

(d) Permit Requirements for Sources located beyond 25 miles of a State Seaward Boundary. (1) OCS sources located beyond 25 miles of a state seaward boundary shall be subject to the permitting requirements set forth in § 55.13 of this part.

(2) The Administrator shall retain authority to implement and enforce all requirements of this part for OCS sources located beyond 25 miles from a state seaward boundary.

§ 55.7 Exemptions.

(a) The Administrator or the delegated agency may exempt a source from a control technology requirement in effect under this part if the Administrator or the delegated agency finds that compliance with the control technology requirement is technically infeasible or

[1] 40 CFR part 70 was published in the Federal Register issue of May 10, 1991 (56 FR 21712) as a proposed rule.

[2] EPA will propose 40 CFR part 71 in the future.

will cause an unreasonable threat to health and safety.

(b) An applicant shall submit a request for an exemption from a control technology requirement at the same time as the applicant submits a preconstruction or operating permit application to the Administrator or delegated agency. If no permit or permit modification is required, an exemption request must be submitted to the Administrator or delegated agency within 90 days from the date the requirement is promulgated by EPA.

(1) A request for exemption shall include information that demonstrates that compliance with a requirement of this part would be technically infeasible or would cause an unreasonable threat to health and safety.

(2) The request shall include a proposed substitute requirement(s) as close in stringency to the original requirement as possible.

(3) The request shall include an estimate of emission reductions that would be achieved by compliance with the original requirement, an estimate of emission reductions that would be achieved by compliance with the proposed substitute requirement(s), and an estimate of residual emissions.

(4) The request shall identify emission reductions of a sufficient quantity to offset the estimated residual emissions.

(c) If the authority to grant exemptions has been delegated, the delegated agency shall consult with the Minerals Management Service and the U.S. Coast Guard to determine whether the exemption will be granted.

(1) The delegated agency shall provide to the Minerals Management Service, and the U.S. Coast Guard a copy of the application within 15 days of receiving such application.

(2) If the delegated agency, the Minerals Management Service, and the U.S. Coast Guard cannot reach consensus decision on an exemption request within 90 days from the date the delegated agency received the applications, the exemption request shall automatically be appealed to the Administrator.

(3) Automatic appeal to the Administrator can be delayed beyond the initial 90 days by the mutual consent of the delegated agency, the Minerals Management Service, and the U.S. Coast Guard.

(d) At the time the draft permit is issued for public comment or within 90 days of receipt of the exemption request if no permit is required, the Administrator or the delegated agency shall:

(1) Propose to grant the exemption request; and

(i) Shall propose a substitute requirement(s), equal to or as close in stringency to the original requirement as possible; and

(ii) Provide for adequate public notice and comment; or

(2) Shall deny the exemption request.

(e) *Grant of Exemption.* (1) The Administrator or delegated agency shall impose a substitute requirement(s), equal to or as close in stringency to the original requirement as possible.

(2) The Administrator or the delegated agency shall require the applicant to offset any residual emissions resulting from the exemption, in accordance with the requirements of the Act and the regulations thereunder.

(3) For new and existing OCS sources as defined in the applicable requirements of §§ 55.13 and 55.14 of this part, offsets shall be obtained at the following ratios, in accordance with the requirements of the Act and the regulations thereunder:

(i) New OCS sources shall comply with the offset ratio required in the COA if offsets are required in the COA;

(ii) New OCS sources shall comply with the offset ratio of 1:1 if offsets are required in the COA;

(iii) Existing OCS sources shall offset at a ratio of 1:1.

(f) *Administrative Procedures and Public Participation.* If a permit is not required, the Administrator will use the following procedures for processing an exemption request under this section:

(1) Within 30 days of receipt of an exemption request, the Administrator shall advise the applicant of any deficiency in the information submitted in support of the exemption. In the event of such a deficiency, the date of receipt of the request, for the purpose of this Section, shall be the date on which all required information is received by the Administrator.

(2) Within 90 days after receipt of a complete request, the Administrator shall:

(i) Make a preliminary determination whether the exemption request should be granted with conditions in accordance with paragraph (d) of this section, or denied. Denials of exemption requests are not subject to any further public notice, comment, or hearings. Denials by the Regional Administrator may be informally appealed to the Administrator within 30 days of the decision by a letter setting forth the relevant facts. The appeal shall be considered denied if the Administrator does not take action on the letter within 60 days after receiving it. Written notice of the denial shall be given to the requester.

(ii) Make available, in a least one location in the COA and NOA, a copy of all materials submitted by the requester, a copy of the Administrator's preliminary determination, and a copy or summary of other materials, if any, considered by the Administrator in making his preliminary determination; and

(iii) Notify the public, by prominent advertisement in a newspaper of general circulation in the COA and NOA, of the opportunity for written public comment on the information submitted by the owner or operator and the Administrator's preliminary determination on the approvability of the exemption request.

(3) A copy of the notice required pursuant to this paragraph shall be sent to the applicant and to officials and agencies having jurisdiction in the COA and NOA as follows: State and local air pollution control agencies, and the chief executive of the city and county; the Federal Land Manager of any adjacent Class I areas; and the Indian governing body whose lands may be affected by emissions from the OCS source.

(4) Public comments submitted in writing within 30 days after the date the public notice is made available will be considered by the Administrator in making his final decision on the request. All comments will be made available for public inspection. At the time that any final decision is issued, the Administrator will issue a response to comments.

(5) The Administrator will take final action on the exemption request within 30 days after the close of the public comment period. The Administrator will notify, in writing, the applicant and each person who has submitted written comments, or requested notice of the final action, of the conditional approval, or denial of the request, and will set forth his reasons for conditional approval or denial. Such notification will be made available for public inspection.

(6) Within 30 days after final action has been taken, any person filed comments on the preliminary determination may petition the Administrator to review any aspect of the decision. Any person who failed to file comments on the preliminary decision may petition for administrative review only on the changes from the preliminary to the final decision.

(7) The Administrator may extend each of the time periods specified in § 55.7(e) of this part by no more than 30 days or such other period as agreed to by the applicant and the Administrator.

§ 55.8 Monitoring, reporting, inspections, and compliance.

(a) The Administrator may require monitoring or reporting and may authorize inspections pursuant to section 114 of the Act and the regulations thereunder. Sources shall also be subject to the requirements as set forth in §§ 55.13 and 55.14 of this part.

(b) The requirements for Enhanced Compliance and Monitoring (section 114(a)(3)) and the requirements for Certification of Compliance (40 CFR part 64) shall apply.

(c) An existing OCS source that is not required to obtain a permit to operate within 24 months of the date of promulgation of this part shall submit a compliance report to the Administrator or delegated agency within 25 months of promulgation of this part. The compliance report shall specify all the applicable OCS requirements and a description of how the source has complied with these requirements.

(d) The Administrator or the delegated agency shall consult with the Minerals Management Service and the U.S. Coast Guard prior to inspections. This shall in no way interfere with the ability of EPA or the delegated agency to conduct surprise inspections.

§ 55.9 Enforcement.

(a) OCS sources shall comply with all requirements of this part and all permits issued pursuant to this part. Failure to do so shall be considered a violation of section 111(e) of the Act.

(b) Pursuant to section 328 of the Act, the provisions of sections 113, 114, 120, and 303 of the Act shall apply to OCS sources.

(c) If a facility is ordered to cease operation of any piece of equipment due to enforcement action taken by EPA or a delegated agency pursuant to this part, the shut down will be coordinated by the enforcing agency, with the Minerals Management Service and the U.S. Coast Guard to assure that the shut down can proceed in a safe manner. No shut down action will occur until consultation with these agencies is completed, but in no case will initiation of the shut down be delayed by more than 24 hours.

§ 55.10 Fees.

(a) *OCS Sources Located Within 25 Miles from States' Seaward Boundaries.*

(1) Until promulgation of 40 CFR part 71 in the **Federal Register** as a final rule, EPA will collect operating fees from OCS sources calculated in accordance with the fee requirements imposed in the COA if the fees are based on regulatory objectives, such as discouraging emissions. If the fee requirements are based on cost recovery objectives, however, EPA will adjust the fees to reflect the costs to EPA to issue and administer the permit program. Upon its promulgation in the **Federal Register** as a final rule, EPA will collect operating permit fees in accordance with the requirements 40 CFR part 71.

(2) EPA will collect all other fees from OCS sources calculated in accordance with the fee requirements imposed on the COA if the fees are based on regulatory objectives, such as discouraging emissions. If the fee requirements are based on cost recovery objectives, however, EPA will adjust the fees to reflect the costs to EPA to issue and administer the permit program.

(3) Upon delegation, the delegated agency will collect fees from OCS sources calculated in accordance with the fee requirements imposed in the COA. Upon delegation of authority to implement and enforce any portion of this part, EPA will cease to collect fees imposed in conjunction with that portion.

(b) *OCS Sources Located Beyond 25 Miles from States' Seaward Boundaries.* EPA will calculate and collect fees in accordance with the requirements of 40 CFR part 71 when promulgated as a final rule in the **Federal Register**.

§ 55.11 Delegation.

(a) The governor or the governor's designee of any state adjacent to an OCS source subject to the requirements of this part, may submit a request to the Administrator for authority to implement and enforce the requirements of this OCS program within 25 miles of the state seaward boundary, pursuant to section 328(c) of the Act. Authority to implement and enforce §§ 55.5, 55.11, and 55.12 of this part, will not be delegated.

(b) The Administrator will delegate implementation and enforcement authority to a state if the Administrator determines that the state's regulations are adequate including a demonstration by the state that:

(1) It has an adjacent OCS source;

(2) It has adopted the appropriate portions of this part into state law;

(3) It has adequate authority under state law to implement and enforce the requirements of this part. A letter from the State Attorney General shall be required stating that the requesting agency has such authority; and

(4) It has adequate resources to implement and enforce the requirements for this part.

(c) The Administrator will notify in writing the governor or the governor's designee of the Administrator's final action on a request for delegation within 6 months of the receipt of the request.

(d) If the Administrator finds that the state regulations are adequate, the Administrator will authorize the state to implement and enforce the OCS requirements under state law. If the Administrator finds that only part of the state regulations are adequate, he will authorize the state to implement and enforce only that portion of this part.

(e) Upon delegation, a state may use any authority it possesses under state law to enforce any permit condition or any other requirement of this part for which the agency has delegated authority under this part. A state may use any authority it possesses under state law to require monitoring and reporting and to conduct inspections.

(f) Nothing in this part shall prohibit the Administrator from enforcing any requirement of this part.

(g) The Administrator will withdraw a delegation of any authority to implement and enforce any or all of this part if the Administrator determines that:

(1) The requirements of this part are not being adequately implemented or enforced by the delegated agency;

(2) The requirements of this part are being implemented or enforced in an inequitable, arbitrary, or capricious manner.

(h) *Sharing of information.* Any information obtained or used in the administration of a delegated program shall be made available to EPA upon request without restriction. If the information has been submitted to the delegated agency under a claim of confidentiality, the delegated agency must notify the source of this obligation and submit that claim to EPA. Any information obtained from a delegated agency accompanied by a claim of confidentiality will be treated in accordance with the requirements of 40 CFR part 2.

(i) *Grant of Exemptions.* A decision by a delegated agency to grant or deny an exemption request may be appealed to the Administrator in accordance with § 55.7(e)(6) of this part.

§ 55.12 Consistency updates.

(a) The Administrator will update this part as necessary to maintain consistency with onshore requirements in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I.

(b) When an OCS source submits an NOI, the Administrator will evaluate the requirements of this part to determine whether they are consistent with the onshore requirements existing at that

time, in order to determine if a consistency update is necessary. If a consistency update is necessary, the Administrator will update this Part in an expeditious manner.

(c) No rule or regulation will be incorporated into this part if EPA determines that it is inequitable, arbitrary, or capricious.

§ 55.13 Listing of federal requirements that apply to OCS sources.

(a) The requirements of this section shall apply to OCS sources as set forth below. In the event that a requirement of this section conflicts with an applicable requirement of § 55.14 of this part, and a source cannot comply with the requirements of both sections, the more stringent requirement shall apply.

(b) In applying the requirements of this section:

(1) *New Source* means new OCS source; and

(2) *Existing Source* means existing OCS source; and

(3) *Modification* means a modification to an OCS source.

(c) 40 CFR part 60 (NSPS) shall apply to all OCS sources in the same manner as in the NOA.

(d) 40 CFR 52.21 (PSD) shall apply to OCS source:

(1) Located within 25 miles of the states' seaward boundary if the requirements are in effect in the COA;

(2) Located beyond 25 miles of states' seaward boundaries.

(e) 40 CFR part 61, together with any other provisions promulgated pursuant to section 112 of the Act, shall apply if rationally related to the attainment and maintenance of federal or state ambient air quality standards.

(f) 40 CFR part 71 when promulgated, shall apply to OCS sources:

(1) Located within 25 miles of the states' seaward boundary if the requirements are in effect in the COA;

(2) Located beyond 25 miles of states' seaward boundaries.

(g) The provisions of 40 CFR 52.10, 40 CFR 52.24, and 40 CFR part 51 and accompanying appendix S shall apply to OCS sources located within 25 miles of states' seaward boundaries, if these requirements are in effect in the COA.

§ 55.14 Listing of Federal, State, and Local Requirements that Apply to OCS Sources Located Within 25 Miles of States' Seaward Boundaries, by State.

(a) Definitions. (1) In applying the requirements of this section:

(i) *New Source* means new OCS source; and

(ii) *Existing Source* means existing OCS source; and

(iii) *Modification* means a modification to an existing OCS source.

(2) During periods of EPA implementation and enforcement of this section, the following shall apply:

(i) Any reference to a State or local air pollution control agency shall mean EPA.

(ii) Any submittal to a State or local air pollution control agency shall be submitted to the Administrator through the EPA Regional Office.

(iii) Nothing in this section shall alter or limit EPA's authority to administer or enforce the requirements of this part under federal law.

(iv) EPA shall not be bound by any state or local administrative or procedural requirements including, but not limited to requirements pertaining to hearing boards, permit issuance, public notice procedures, and public hearings. EPA will follow the applicable procedures set forth elsewhere in this part, in 40 CFR part 124, and in Federal rules promulgated pursuant to title V of the Act (as such rules apply in the COA), when administering this section.

(b) Alaska. (1) Federal Requirements.

(i) 40 CFR part 52, subpart C.

(ii) (reserved)

(2) State requirements.

(i) Alaska Administrative Code—Department of Environmental Conservation. The following sections of title 18, chapter 50:

18 AAC 50.020 Ambient Air Quality Standards (Effective 7/21/91)
18 AAC 50.030 Open Burning (Effective 10/30/83)
18 AAC 50.040 Incinerators (Effective 10/30/83)
18 AAC 50.050 Industrial Processes and Fuel Burning Equipment (Effective 5/11/91)
18 AAC 50.090 Ice Fog Limitations (Effective 5/26/72)
18 AAC 50.100 Marine Vessels (Effective 7/21/91)
18 AAC 50.110 Air Pollution Prohibited (Effective 5/26/72)
18 AAC 50.300 Permit to Operate (Effective 7/21/91)
18 AAC 50.310 Revocation or Suspension of Permit (Effective 5/4/80)
18 AAC 50.400 Application Review and Issuance of Permit to Operate (Effective 7/21/91)
18 AAC 50.500 Source Testing (Effective 6/2/88)
18 AAC 50.510 Ambient Analysis Methods (Effective 7/21/91)
18 AAC 50.520 Emission and Ambient Monitoring (Effective 7/21/91)
18 AAC 50.530 Circumvention (Effective 6/7/87)
18 AAC 50.620 Air Quality Control Plan; Volume II, Section IV: Paragraph F.—Facility Review Procedures; Paragraph G.—Application Review and Permit Development, only. (Effective 7/21/91)
18 AAC 50.900 Definitions (Effective 7/21/91)

(ii) (Reserved)

(3) Local requirements. (i) South Central Alaska Clean Air Authority.

15.30.030 Definitions
15.30.100 Registration and Notification, except E.
15.30.110 Permit to Operate
15.30.120 Source Reports
15.30.130 Source Tests
15.35.040 Stationary Source Emissions—General Definitions
15.35.050 Stationary Source Emissions—Visible Emission Standards
15.35.060 Stationary Source Emissions—Emission Standards
15.35.080 Stationary Source Emissions—Circumvention
15.35.090 Stationary Source Emissions—Fugitive Emissions
15.35.100 Stationary Source Emissions—Open Burning

(ii) (Reserved)

(c) California. (1) Federal Requirements.

(i) 40 CFR part 52, subpart F.

(ii) (Reserved)

(2) State requirements.

(reserved)

(3) Local requirements.

(i)–(iv) (reserved)

(v) San Luis Obispo County Air Pollution Control District.

Rule 103 Conflicts Between District, State and Federal Rules (Adopted 8/6/76)
Rule 104 Action in Areas of High Concentration (Adopted 7/5/77)
Rule 105 Definitions (Adopted 11/5/91)
Rule 106 Standard Conditions (Adopted 8/6/76)
Rule 108 Severability (Adopted 11/13/84)
Rule 113 Continuous Emissions Monitoring, except F. (Adopted 7/5/77)
Rule 201 Equipment not Requiring a Permit, except A.1.b. (Adopted 11/5/91)
Rule 202 Permits, except A.4. and A.8. (Adopted 11/5/91)
Rule 203 Applications, except 2. (Adopted 11/5/91)
Rule 204 Requirements, except B.2. and C. (Adopted 11/5/91)
Rule 209 Provision for Sampling and Testing Facilities (Adopted 11/5/91)
Rule 210 Periodic Inspection and Renewal of Permits to Operate (Adopted 11/5/91)
Rule 213 Calculations, except E.4. and F. (Adopted 11/5/91)
Rule 302 Schedule of Fees (Adopted 7/1/91)
Rule 305 Fees for Acid Deposition Research (Adopted 7/18/89)
Rule 401 Visible Emissions (Adopted 8/6/76)
Rule 403 Particulate Matter Emission Standards (Adopted 8/6/76)
Rule 404 Sulfur Compounds Emission Standards, Limitations and Prohibitions (Adopted 12/6/76)
Rule 405 Nitrogen Oxides Emission Standards, Limitations and Prohibitions (Adopted 11/13/84)
Rule 406 Carbon Monoxide Emission Standards, Limitations and Prohibitions (Adopted 11/14/84)

Rule 407 Organic Material Emission Standards, Limitations and Prohibitions (Adopted 1/10/89)
Rule 411 Surface Coating of Metal Parts and Products (Adopted 1/10/89)
Rule 416 Degreasing Operations (Adopted 6/18/79)
Rule 422 Refinery Process Turnarounds (Adopted 6/18/79)
Rule 501 General Burning Provisions (Adopted 1/10/89)
Rule 503 Incinerator Burning, except B.1.a. (Adopted 2/7/89)
Rule 601 New Source Performance Standards (Adopted 9/4/90)

(vi) Santa Barbara County Air Pollution Control District.

Rule 102 Definitions (Adopted 7/30/91)
Rule 103 Severability (Adopted 10/23/78)
Rule 201 Permits Required (Adopted 7/2/79)
Rule 202 Exemptions to Rule 201 (Adopted 7/30/91)
Rule 203 Transfer (Adopted 10/23/78)
Rule 204 Applications (Adopted 10/23/78)
Rule 205 Standards for Granting Applications (Adopted 7/30/91)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Applications (Adopted 10/23/78)
Rule 210 Fees (Adopted 5/7/91)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter—Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration—Southern Zone (Adopted 10/23/78)
Rule 306 Dust and Fumes—Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate—Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/2/90)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems—Southern Zone (Adopted 10/23/78)
Rule 321 Control of Degreasing Operations (Adopted 7/10/90)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 2/20/90)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Storage of Petroleum and Petroleum Products (Adopted 7/11/89)
Rule 326 Effluent Oil Water Separators (Adopted 10/23/78)
Rule 327 Organic Land Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 331 Refinery Valves and Flanges (Adopted 7/11/89)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 505 Breakdown Conditions Sections A., B.1., and D. only. (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 6/15/81)

(vii) South Coast Air Quality Management District.

Rule 102 Definition of Terms (Adopted 11/4/88)
Rule 103 Definition of Geographical Areas (Adopted 1/9/76)
Rule 104 Reporting of Source Test Data and Analyses (Adopted 1/9/76)
Rule 107 Determination of Volatile Organic Compounds in Organic Material (Adopted 1/8/82)
Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 5/5/89)
Rule 201 Permits Required (Adopted 1/5/90)
Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
Rule 202 Temporary Permit to Operate (Adopted 5/7/76)
Rule 203 Permit to Operate (Adopted 1/5/90)
Rule 204 Permit Conditions (Adopted 1/4/85)
Rule 205 Cancellation of Applications (Adopted 1/5/90)
Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
Rule 208 Permit for Open Burning (Adopted 1/5/90)
Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
Rule 210 Applications (Adopted 1/5/90)
Rule 212 Standards for Approving Permits (Adopted 6/28/90)
Rule 214 Denial of Permits (Adopted 1/5/90)
Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
Rule 218 Stack Monitoring (Adopted 8/7/81)
Rule 219 Equipment Not Requiring a Permit Pursuant to Regulation II (Adopted 6/3/88)
Rule 220 Exemption—Net Increase in Emissions (Adopted 8/7/81)
Rule 221 Plans (Adopted 1/4/85)
Rule 301 Permit Fees (Adopted 6/7/91)
Rule 304 Equipment, Materials and Ambient Air Analyses (Adopted 7/6/90)
Rule 304.1 Analyses Fees (Adopted 6/7/91)
Rule 305 Fees for Acid Deposition Research (Adopted 3/3/89)
Rule 306 Plan Fees (Adopted 7/6/90)
Rule 304.1 Analyses Fees (Adopted 5/1/87)
Rule 401 Visible Emissions (Adopted 4/7/89)
Rule 403 Fugitive Dust (Adopted 5/5/76)
Rule 404 Particulate Matter—Concentration (Adopted 2/7/86)
Rule 405 Solid Particulate Matter—Weight (Adopted 2/7/86)
Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/4/82)
Rule 408 Circumvention (Adopted 5/7/76)
Rule 409 Combustion Contaminants (Adopted 8/7/81)
Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430 Breakdown Provisions, (a) and (e) only (Adopted 5/5/78)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 5/4/90)
Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 5/4/90)
Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)
Rule 441 Research Operations (Adopted 5/7/76)
Rule 442 Usage of Solvents (Adopted 3/5/82)
Rule 444 Open Fires (Adopted 10/2/87)
Rule 463 Storage of Organic Liquids (Adopted 12/7/90)
Rule 465 Vacuum Producing Devices or Systems (Adopted 12/7/90)
Rule 468 Sulfur Recovery Units (Adopted 10/8/76)
Rule 473 Disposal of Solid and Liquid Wastes (Adopted 5/7/76)
Rule 474 Fuel Burning Equipment—Oxides of Nitrogen (Adopted 12/4/81)
Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)
Rule 476 Steam Generating Equipment (Adopted 10/8/76)
Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77)

Addendum to Regulation IV

Rule 701 General (Adopted 7/9/82)
Rule 702 Definitions (Adopted 7/11/80)
Rule 704 Episode (Declaration Adopted 7/9/82)
Rule 707 Radio-Communication System (Adopted 7/11/80)
Rule 708 Plans (Adopted 7/9/82)
Rule 708.1 Stationary Sources Required to File Plans (Adopted 4/4/80)
Rule 708.2 Content of Stationary Source Curtailment Plans (Adopted 4/4/80)
Rule 708.4 Procedural Requirements for Plans (Adopted 7/11/80)
Rule 709 First Stage Episode Actions (Adopted 7/11/80)
Rule 710 Second Stage Episode Actions (Adopted 7/11/80)
Rule 711 Third Stage Episode Actions (Adopted 7/11/80)
Rule 712 Sulfate Episode Actions (Adopted 7/11/80)
Rule 715 Burning of Fossil Fuel on Episode Days (Adopted 8/24/77)
Regulation IX New Source Performance Standards (Adopted 9/7/90)
Rule 1106 Marine Coating Operations (Adopted 12/7/90)
Rule 1107 Coating of Metal Parts and Products (Adopted 11/2/90)
Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/6/81)

Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)
Rule 1110.2 Emissions from Gaseous- and Liquid-Fueled Internal Combustion Engines (Adopted 9/7/90)
Rule 1113 Architectural Coatings (Adopted 12/7/90)
Rule 1116.1 Lightering Vessel Operations—Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 12/1/78)
Rule 1122 Solvent Cleaners (Degreasers) (Adopted 5/5/89)
Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)
Rule 1129 Aerosol Coatings (Adopted 11/2/90)
Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 6/4/89)
Rule 1140 Abrasive Blasting (Adopted 8/2/85)
Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)
Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 1/6/89)
Rule 1146.1 Emissions of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 10/5/90)
Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149 Storage Tank Degassing (Adopted 4/1/88)
Rule 1168 Control of Volatile Organic Compound Emissions from Adhesive Applications (Adopted 7/19/91)
Rule 1173 Fugitive Emissions of Volatile Organic Compounds (Adopted 12/7/90)
Rule 1176 Sumps and Wastewater Separators (Adopted 1/5/90)
Rule 1301 General (Adopted 6/28/90)
Rule 1302 Definitions (Adopted 5/3/91)
Rule 1303 Requirements (Adopted 5/3/91)
Rule 1304 Exemptions (Adopted 5/3/91)
Rule 1306 Emission Calculations (Adopted 5/3/91)
Rule 1313 Permits to Operate (Adopted 6/28/90)
Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 10/6/89)
Rule 1701 General (Adopted 1/6/89)
Rule 1702 Definitions (Adopted 1/6/89)
Rule 1703 PSD Analysis (Adopted 10/7/88)
Rule 1704 Exemptions (Adopted 1/6/89)
Rule 1706 Emission Calculations (Adopted 1/6/89)
Rule 1713 Source Obligation (Adopted 10/7/88)

Appendix

(viii) Ventura County Air Pollution Control District.

Rule 2 Definitions (Adopted 5/8/90)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 8/14/77)
Rule 10 Permits Required (Adopted 7/5/83)
Rule 11 Application Contents (Adopted 8/15/78)
Rule 12 Statement by Application Preparer (Adopted 6/16/87)
Rule 13 Statement by Applicant (Adopted 11/21/78)
Rule 14 Trial Test Runs (Adopted 5/23/72)
Rule 15 Permit Issuance (Adopted 7/5/83)
Rule 16 Permit Contents (Adopted 12/2/80)
Rule 18 Permit to Operate Application (Adopted 8/17/76)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 21 Expiration of Applications and Permits (Adopted 6/23/81)
Rule 23 Exemptions from Permit (Adopted 1/6/91)
Rule 24 Source Recordkeeping and Reporting (Adopted 11/21/78)
Rule 26 New Source Review (Adopted 2/26/85)
Rule 26.1 All New or Modified Major Stationary Sources (Adopted 11/19/85)
Rule 26.2 New or Modified Non-Major Sources (Adopted 11/19/85)
Rule 26.3 New or Modified Stationary Sources—Prevention of Significant Deterioration (PSD) (Adopted 11/19/85)
Rule 26.6 Air Quality Impact Analysis and Notification (Adopted 1/10/84)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 5/30/89)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions; Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)

Appendix II-A Information Required for Applications to the Air Pollution Control District

Appendix II-B Best Available Control Technology (BACT) Tables

Rule 42 Permit Fees (Adopted 6/19/90)
Rule 44 Exemption Evaluation Fee (Adopted 1/8/91)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter—Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter—Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 7/5/83)
Rule 56 Open fires (5/24/88)
Rule 57 Combustion Contaminants—Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment—Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 7/5/83)
Rule 66 Organic Solvents (Adopted 11/24/87)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 9/11/90)
Rule 71.1 Crude Oil Production and Separation (Adopted 10/4/88)
Rule 71.2 Storage of Reactive Organic Compound Liquids Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 9/11/90)
Rule 71.4 Petroleum Sumps, Pits, Ponds and Well Cellars (Adopted 10/4/88)
Rule 72 New Source Performance Standards (NSPS) (Adopted 6/19/90)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 9/5/69)
Rule 74.2 Architectural Coatings (Adopted 10/21/86)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 5/8/90)
Rule 74.6.1 Cold Cleaning Operations (Adopted 9/12/89)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 9/12/89)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 1/10/89)
Rule 74.8 Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 9/5/89)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 9/22/87)
Rule 74.11 Natural Gas-Fired Residential Water Heaters—Control of NO_x (Adopted 4/9/85)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 5/15/89)
Rule 74.15 Boilers, Steam Generators and Process Heaters (Adopted 3/28/89)
Rule 74.16 Oilfield Drilling Operations (Adopted 1/8/91)
Rule 75 Circumvention (Adopted 11/27/78)

Appendix IV-A Soap Bubble Tests

Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Stack Monitoring (Adopted 6/4/91)
Rule 155 Plans (Adopted 11/20/79)
Rule 157 First Stage Episode Actions (Adopted 11/20/79)
Rule 158 Second Stage Episode Actions (Adopted 11/20/79)
Rule 159 Third Stage Episode Actions (Adopted 11/20/79)

(d) and (e) [reserved]

(f) Florida. (1) Federal Requirements.

(i) 40 CFR part 52, subpart K.

(ii) [reserved]

(2) State requirements.

(i) Florida Administrative Code—Department of Environmental Regulation. The following sections of chapter 17:

2.100 Definitions (Adopted 9/13/90)
2.200 Statement of Intent (Adopted 8/26/81)
2.210 Permits Required (Adopted 7/9/89)
2.215 Emission Estimates (Adopted 5/1/85)
2.240 Circumvention (Adopted 8/26/81)
2.250 Excess Emissions (Adopted 8/26/81)
2.260 Air Quality Models (Adopted 7/9/89)
2.270 Stack Height Policy (Adopted 10/20/86)

2.280 Severability (Adopted 8/26/81)
2.300 Ambient Air Quality Standards (Adopted 7/9/89)
2.310 Maximum Allowable Increases (Prevention of Significant Deterioration) (Adopted 7/13/90)
2.320 Air Pollution Episodes (Adopted 8/26/81)
2.330 Air Alert (Adopted 5/30/80)
2.340 Air Warning (Adopted 7/9/89)
2.350 Air Emergency (Adopted 5/30/88)
2.500 Prevention of Significant Deterioration (Adopted 11/25/82)
2.510 New Source Review for Nonattainment Areas (Adopted 8/30/89)
2.520 Sources Not Subject to Prevention of Significant Deterioration or Nonattainment Requirements (Adopted 7/9/89)
2.530 Source Reclassification (Adopted 1/12/82)
2.540 Source Specific New Source Review Requirements (Adopted 7/9/89)
2.600 Specific Source Emission Limiting and Performance Standards (Adopted 8/30/89)
2.610 General Particulate Emission Limiting Standards (Adopted 7/9/89)
2.620 General Pollutant Emission Limiting Standards, except (2). (Adopted 8/26/81)
2.630 Best Available Control Technology (BACT) (Adopted 5/1/85)
2.640 Lowest Achievable Emission Rate (LAER) (Adopted 8/26/81)
2.650 Reasonably Available Control Technology (RACT), except (2)(f) (Adopted 9/13/90)
2.660 Standards of Performance for New Stationary Sources (NSPS) (Adopted 12/18/89)
2.670 National Emission Standards for Hazardous Air Pollutants (Adopted 12/5/88)
2.700 Stationary Point Source Emission Test Procedures (Adopted 8/30/89)
2.710 Continuous Emission Monitoring Requirements (Adopted 8/30/89)
2.753 DER Ambient Test Methods (Adopted 5/1/85)
4.020 Definitions (Adopted 3/31/88)
4.021 Transferability of Definitions (Adopted 8/31/88)
4.030 General Prohibitions (Adopted 8/31/88)
4.040 Exemptions (Adopted 8/31/88)
4.050 Procedure to Obtain Permit; Application, except (4)(b) through (4)(j) and 4(n) (Adopted 5/30/91)
4.070 Standards for Issuing or Denying Permits; Issuance; Denial (Adopted 3/28/91)
4.080 Modification of Permit Conditions (Adopted 3/19/90)
4.090 Renewals (Adopted 3/19/90)
4.100 Suspension and Revocation (Adopted 8/31/88)
4.110 Financial Responsibility (Adopted 8/31/88)
4.120 Transfer of Permits (Adopted 3/19/90)
4.130 Plant Operations—Problems (Adopted 8/31/88)
4.160 Permit Conditions, except (16) and (17) (Adopted 10/4/89)
4.210 Construction Permits (Adopted 8/31/88)
4.220 Operation Permits for New Sources (Adopted 8/31/88)
4.520 Definitions (Adopted 7/11/90)
4.530 Procedures (Adopted 3/19/90)
4.540 General Conditions for all General Permits (Adopted 8/31/88)
256.100 Declaration and Intent (Adopted 10/20/86)
256.200 Definitions (Adopted 10/20/86)
256.300 Prohibitions (Adopted 10/20/86)
256.600 Industrial, Commercial, Municipal and Research Open Burning (Adopted 8/26/87)
256.700 Open Burning Allowed (Adopted 10/20/86)

(ii) [reserved]

(g) through (n) [reserved]

(o) North Carolina. (1) Federal requirements.

(i) 40 CFR part 52, subpart II.

(ii) [reserved]

(2) State requirements.

(i) North Carolina Air Pollution Control Requirements. The following sections of subchapters 2D and 2H:

2D.0101 Definitions (Adopted 12/1/89)
2D.0104 Adoption by Reference Updates (Adopted 10/1/89)
2D.0201 Classification of Air Pollution Sources (Adopted 7/1/84)
2D.0202 Registration of Air Pollution Sources (Adopted 6/1/85)
2D.0303 Emission Reduction Plans (Adopted 7/1/84)
2D.0304 Preplanned Abatement Program (Adopted 7/1/88)
2D.0305 Emission Reduction Plan; Alert Level (Adopted 7/1/84)
2D.0306 Emission Reduction Plan; Warning Level (Adopted 7/1/84)
2D.0307 Emission Reduction Plan; Emergency Level (Adopted 7/1/84)
2D.0401 Purpose (Adopted 10/1/89)
2D.0501 Compliance with Emission Control Standards (Adopted 10/1/89)
2D.0502 Purpose (Adopted 6/1/88)
2D.0503 Particulates from Fuel Burning Indirect Heat Exchanger (Adopted 6/1/85)
2D.0505 Control of Particulates from Incinerators (Adopted 7/1/87)
2D.0510 Particulates: Sand, Gravel and Crushed Stone Operations (Adopted 1/1/85)
2D.0511 Particulates, SO_2 from Lightweight Aggregate Processes (Adopted 10/1/89)
2D.0515 Particulates from Miscellaneous Industrial Processes (Adopted 1/1/85)
2D.0516 Sulfur Dioxide Emissions Combustion Sources (Adopted 10/1/89)
2D.0518 Miscellaneous Volatile Organic Compound Emissions (Adopted 2/1/83)
2D.0519 Control of Nitrogen Dioxide Emissions (Adopted 10/1/89)
2D.0520 Control and Prohibition of Open Burning (Adopted 1/1/85)
2D.0521 Control of Visible Emissions (Adopted 1/1/85)
2D.0530 Prevention of Significant Deterioration (Adopted 10/1/89)
2D.0531 Sources in Nonattainment Area (Adopted 12/1/89)
2D.0532 Sources Contributing to an Ambient Violation (Adopted 10/1/89)
2D.0533 Stack Height (Adopted 7/1/87)
2D.0535 Excess Emissions Reporting and Malfunctions, (a) and (f) only. (Adopted 5/1/90)
2D.0537 Control of Mercury Emissions (Adopted 6/1/85)
2D.0601 Purpose and Scope (Adopted 7/1/84)
2D.0602 Definitions (Adopted 7/1/84)
2D.0604 Sources Covered by Implementation Plan Requirements (Adopted 7/1/88)
2D.0606 Other Coal or Residual Oil Burners (Adopted 5/1/85).
2D.0607 Exceptions to Monitoring and Reporting (Adopted 7/1/84)
2D.0901 Defintions (Adopted 12/1/89)
2D.0902 Applicability (Adopted 5/1/90)
2D.0903 Recordkeeping, Reporting, Monitoring (Adopted 12/1/89)
2D.0906 Circumvention (Adopted 1/1/85)
2D.0912 General Provisions on Test Methods and Procedures (Adopted 12/1/89)
2D.0914 Determination of VOC Emission Control System Efficiency (Adopted 1/1/85)
2D.0925 Petroleum Liquid Storage (Adopted 12/1/89)
2D.0933 Petroleum Liquid Storage in External Floating Roof Tanks (Adopted 12/1/89)
2D.0939 Determination of Volatile Organic Compound Vapor Emissions (Adopted 7/1/88)
2D.1101 Purpose (Adopted 5/1/90)
2D.1102 Applicability (Adopted 5/1/90)
2D.1103 Definition (Adopted 5/1/90)
2D.1104 Toxic Air Pollutant Guidelines (Adopted 5/1/90)
2D.1105 Facility Reporting, Recordkeeping (Adopted 5/1/90)
2D.1106 Determination of Ambient Air Concentrations (Adopted 5/1/90)
2D.1107 Multiple Facilities (Adopted 5/1/90)
2D.1108 Multiple Pollutants (Adopted 5/1/90)
2H.0601 Purpose and Scope (Adopted 10/1/89)
2H.0602 Definitions (Adopted 5/1/90)
2H.0603 Applications (Adopted 12/1/89)
2H.0609 Permit Fees (Adopted 8/1/88)
2H.0610 Permit Requirements for Toxic Air Pollutants (Adopted 5/1/90)

(ii) [reserved]

(3) Local requirements.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL-4200-9]

Outer Continental Shelf Air Regulations

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Final rule.

SUMMARY: The EPA is promulgating new regulations that establish requirements to control air pollution from outer continental shelf ("OCS") sources.

The Clean Air Act ("the Act") requires EPA to promulgate a rule establishing air pollution control requirements for OCS sources. The purpose of the requirements is to attain and maintain federal and state ambient air quality standards, to comply with part C of title I of the Act, and to distribute the burden of achieving these goals more equitably between onshore sources and OCS sources.

The requirements apply to all OCS sources except those located in the Gulf of Mexico west of 87.5 degrees longitude (near the border of Florida and Alabama). New sources must comply with the requirements of this part on the date of promulgation and existing sources must comply within 24 months from promulgation. For OCS sources located within 25 miles of states' seaward boundaries, the requirements are the same as the requirements that would be applicable if the source were located in the corresponding onshore area ("COA"). In states affected by this rule, state boundaries extend three miles from the coastline, except off the coast of the Florida Panhandle, where that state's boundary extends three leagues (approximately 9 miles) from the coastline. Sources located beyond 25 miles of states' boundaries are subject to federal requirements for Prevention of Significant Deterioration ("PSD") promulgated pursuant to part C of title I of the Act. New Source Performance Standards ("NSPS") and National Emissions Standards for Hazardous Air Pollutants Standards ("NESHAPS") apply under section 328 to the extent they are rationally related to protection of federal or state ambient air quality standards and compliance with part C of title I of the Act. EPA will amend its new regulations to incorporate the federal operating permit program and enhanced compliance and monitoring regulations when they are promulgated. The rule establishes procedures for EPA to delegate implementation and enforcement of the requirements of this part to state and local agencies. Beyond 25 miles from states' seaward boundaries, the OCS program requirements will be implemented and enforced solely by EPA. The new regulations also establish procedures to allow the Administrator of EPA ("the Administrator") to exempt any OCS source from a control technology requirement if it is technically infeasible or poses an unreasonable threat to health or safety.

DATES: This rule shall be effective as of September 4, 1992. The incorporation by reference of certain rules listed in the regulation (under § 55.14 of this part) is approved by the Director of the Federal Register Office as of September 4, 1992.

ADDRESSES: *Docket:* This rulemaking is determined to be subject to the requirements of § 307(d) of the Act. Supporting information used in developing the rule is contained in EPA docket A-91-76. This docket is available for public inspection and copying at the following locations: (1) U.S. Environmental Protection Agency Region 9, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105, and (2) U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460 in Room M-1500. These locations are open to the public Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Alison Bird, Air and Toxics Division (A-5), U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: This rule (40 CFR part 55) was proposed in the **Federal Register** on December 5, 1991 (56 FR 63774). EPA held four public hearings during January 1992 and accepted public comments on the proposal until February 20, 1992. The hearings were held in San Francisco, CA, Los Angeles, CA, Washington, DC, and Anchorage, AK. The hearing testimony, public comments, EPA's response to comments, and other support documents are contained in the docket referenced above. This preamble discusses changes made to the proposed rule and responds to the major comments received on the proposed rule. This preamble does not repeat information and policies discussed in the preamble that accompanied the proposed rule. Hereafter, the proposed rule and preamble will simply be referred to as the notice of proposed rulemaking ("NPR"). The reader may refer to the NPR for further background and information on this rule.

This preamble is organized according to the following outline:

As in the NPR, citations to various sections within commonly referenced documents will not always be followed by a notation of their origin such as "of this preamble" or "of section 328."

Rather, the reader can recognize the origins of the sections by their nature:

- Sections of the preamble begin with a roman numeral
- Sections of the OCS regulations appear as § 55.xx
- Sections of the Act are numbered in the hundreds
- Sections of non-OCS EPA regulations are preceded by 40 CFR

This preamble and the final rule make frequent use of the term "state," usually meaning the state air pollution control agency that would be the permitting authority. Use of the term "state" may also reference a local air pollution permitting agency or certain Indian tribes which can be the permitting authority for areas within their jurisdiction. In some cases, the term "delegated agency" is used and can refer to the state agency, the local agency, or the Indian tribe, depending on the delegation status of the program. The term state may also be used in the geographic sense and in such cases may refer to the state or the geographic area associated with an onshore permitting authority, such as the nearest onshore area ("NOA"), and the COA.

I. Discussion of the Final Regulations

A. § 55.1—Statutory Authority and Scope

In response to several comments, § 55.1 has been revised from the NPR to more accurately reflect the language of section 328 of the Act by stating that the Administrator is required to issue regulations for the OCS, rather than simply authorized to do so.

In addition, language has been added to this section to clarify that the purpose of this rule is to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. This language sets forth the limits of the rulemaking authority given to EPA under section 328 of the Act. As a result, the state and local rules that EPA incorporates pursuant to this rule must be rationally related to this purpose and may not be used expressly for the purpose of preventing exploration and development of the OCS.

B. § 55.2—Definitions

The following definitions were added or amended since the publication of the NPR. The various changes are summarized below and explained as necessary.

Corresponding Onshore Area ("COA")—This definition has been changed to clarify that the COA may be defined in association with a "proposed" source as well as an existing source. Several commenters noted that this will make clear that a proposed OCS source must comply with the preconstruction requirements of the COA. The definition of NOA has been changed in an identical manner for the same reason.

Delegated Agency—Language has been added to the rule to clarify that the delegated agency may be a state or local agency or an Indian tribe, provided that EPA has found that the delegation requirements of part 55 have been satisfied.

Exploratory Source—Language has been added to this definition to clarify that an exploratory source includes an operation conducted during the exploratory phase to determine the characteristics of the reservoir and formation and may involve the extraction of oil and gas.

Existing Source, New Source and Modification—Many commenters expressed confusion as to when the definitions of existing source, new source, and modification apply. These terms have the meaning given in the federal, state, and local requirements incorporated into §§ 55.13 and 55.14, as stated in the NPR. However, for two years following the date of promulgation of this part, the definitions given in section 111(a) of the Act shall apply for the purpose of determining the required date of compliance with this part, as required by section 328 of the Act and set forth in § 55.3 of this part. Language has been added to this section to clarify the applicability of the definitions given § 55.3 and in the requirements incorporated into §§ 55.13 and 55.14.

Nearest Onshore Area ("NOA")—This definition has been changed so that the NOA may be defined in association with a proposed source. This clarifies that proposed sources are subject to preconstruction requirements (see definition of COA). Language was also added to limit application of the NOA definition to OCS sources located within 25 miles of states' seaward boundaries. The definition of NOA is now consistent with the definition of COA.

Onshore Area—This definition has been changed to reflect the fact that the boundaries of areas designated pursuant to section 107 often do not coincide with the jurisdictional boundaries of any one air pollution control agency. When this is the case, the onshore area will have the same boundaries as the air pollution control agency for the purpose of determining the NOA and the COA.

Outer Continental Shelf—This definition was modified so that it will track any changes made to the definition in the Outer Continental Shelf Lands Act (OCSLA). Commenters were divided on whether or not this definition should be made permanent within this rule or allowed to change if OCSLA changes. EPA concurs with the comment that the determination of applicability, implementation, and enforcement could become unnecessarily complicated if the definitions in OCSLA and this rule diverge.

OCS Source—The definition of "OCS source" has been modified to clarify when EPA will consider vessels to be OCS sources. Section 328(a)(4)(C)(ii) defines an OCS source as a source that is, among other things, regulated or authorized under the OCSLA. The OCSLA in turn provides that the Department of the Interior ("DOI") may regulate "all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources." 43 U.S.C. § 1333(a)(1). Vessels therefore will be included in the definition of "OCS source" when they are "permanently or temporarily attached to the seabed" and are being used "for the purpose of exploring, developing or producing resources therefrom." This would include, for example, drill ships on the OCS.

In addition, when a vessel is physically attached to an OCS facility it will be considered a part of that facility and regulated as such. This is consistent with DOI's regulations, which specifically cover vessels used to transfer production from an offshore facility when the vessel is physically attached to the facility. 30 CFR 250.2. It is also consistent with federal new source review ("NSR") requirements, under which emissions from the stationary source activities of vessels at dockside are considered primary emissions of the marine terminal and are regulated as such. Moreover, under the "same as" requirements of section 328, the OCS platform will have to comply with the same requirements as the marine terminals. It therefore makes sense for vessels to be subject to the same requirements at OCS platforms as they are at marine terminals.

Only the vessel's stationary source activities may be regulated, since when vessels are in transit, they are specifically excluded from the definition of OCS source by statute. In addition, only the stationary source activities of vessels at dockside will be regulated under title I of the Act (which contains NSR and PSD requirements), since EPA

is prohibited from directly regulating mobile sources under that title. See *NRDC v. EPA*, 725 F.2d 761 (DC Cir. 1984). Part 55 thus will not regulate vessels en route to or from an OCS facility as "OCS sources," nor will it regulate any of the non-stationary source activities of vessels while at dockside. Section 328 does not provide authority to EPA to regulate the emissions from engines being used for propulsion of vessels. Any state or local regulations that go beyond these limits will not be incorporated into the OCS rule. If the mobile source emissions of vessels are regulated under future regulations developed pursuant to title II of the Act, the OCS rule will be revised accordingly.

All vessel emissions related to OCS activity will be accounted for by including vessel emissions in the "potential to emit" of an OCS source. Vessel emissions must be included in offset calculations and impact analyses, as required by section 328 and explained in the NPR. Emissions from vessels that service more than one OCS facility will be allocated among all the OCS facilities that the vessel services, to ensure that there is no double-counting of emissions.

EPA received some comments noting that at one point DOI proposed OCS rules that would have regulated vessels. Because the DOI regulations were proposed long before section 328 was enacted and were not developed beyond the stage of a proposal, they were not considered during rule development.

EPA also received comments regarding a development and production plan that DOI approved for an OCS platform named Julius, to be located off the coast of California, which contained requirements for vessels. However, these requirements were not required of the source by DOI, but rather were controls that the source and the state had agreed to. DOI simply incorporated the requirements into the plan as existing controls. Moreover, for the most part, these regulations applied to vessels while at the platform.

State—This definition was added to clarify that state means the state air pollution control agency that would be the permitting authority, a local air pollution permitting agency, or certain Indian tribes which can be the permitting authority for areas within their jurisdiction. In some cases, the term "delegated agency" is used and can refer to the state agency, the local agency, or the Indian tribe, depending on the delegation status of the program. The term may also be used in the geographic sense and then it refers to a state or the area associated with a permitting authority. Usage of this term was described in the NPR and has now been included in the final rule for clarification.

C. § 55.3—Applicability

As discussed in the NPR, this section gives the compliance dates for new and existing sources. Section 328 requires that new sources comply with this part on the date of promulgation, which is the date that the rule is published in the **Federal Register**. Existing sources must comply with this part within 24 months from promulgation. For purposes of compliance with this requirement a "new source" means an OCS source that is a new source within the meaning of section 111(a) and an "existing source" means any source that is not a new source. In brief, section 111(a) defines a "new source" as any stationary source the construction or modification of which is commenced after the publication of the NPR, which for this rule was December 5, 1991.

This section also establishes two separate regulatory regimes, as indicated by the statute and discussed in the NPR. The first applies to OCS sources within 25 miles of states' seaward boundaries. These nearshore OCS sources must comply with all the requirements of this part, including the federal requirements as set forth in § 55.13 and the federal, state, and local requirements of the COA (designated pursuant to § 55.5), as set forth in § 55.14. The second regulatory regime will apply to OCS sources located more than 25 miles beyond states' seaward boundaries. These outer sources must comply with all the applicable requirements of this part, including the federal requirements set forth in § 55.13.

Most of the comments received on this section pertain to the requirements that EPA proposed to incorporate into these two regimes. The reader is referred to sections I.M. and I.N. for a discussion of these comments. The only change made to this section clarifies in § 55.3(c) that sources in the outer regime are not subject to the requirements of the following sections: § 55.6—Requirements to Submit a Notice of Intent; § 55.4—Corresponding Onshore Area Designation; § 55.11—Delegation; § 55.12—Consistency Updates; and § 55.14—Requirements that Apply to OCS Sources Located Within 25 Miles of States' Seaward Boundaries.

D. § 55.4—Requirements To Submit a Notice of Intent ("NOI")

Few comments were received on § 55.4, and the changes, discussed below, are simply to clarify EPA's intent in the NPR in response to comment. As stated in the NPR, the owner or operator of a new OCS source or modification to be located within 25 miles of a state's seaward boundary must submit an NOI to the Administrator through the Regional EPA Office and to the air pollution control agency of the nearest onshore area and adjacent onshore areas. The NOI must include information about the proposed source or modification to determine onshore impacts and the applicability of onshore requirements for the purposes of designating a COA (if necessary) and performing consistency updates as mandated by section 328 of the Act.

The information required to be submitted in the NOI is listed in § 55.4. This information will generally be less extensive than that required by a new source review permit application and will in no way limit the required scope and contents of the permit application or applicable requirements. In response to comments, subsection (c) has been added to the rule to eliminate any confusion in this regard.

Several comments stated that existing sources planning to modify should be required to submit an NOI. In the NPR, modifications that trigger preconstruction requirements were considered new sources as defined by sections 328 and 111(a) of the Act. Section 55.4(a) has been amended to clarify that the NOI requirement applies to new sources and to modifications of existing sources that result in an increase in emissions. The NOI for modifications to existing sources only triggers consistency updates and not the COA procedure, as discussed in more detail in section I.E. below.

In addition, § 55.4(a) has been amended to require that the applicant submit the NOI to the EPA Administrator through the EPA Regional Office and at the same time to the air pollution control agencies of the NOA and onshore areas adjacent to the NOA. This clarification was made in response to comments that sources should submit the NOI to the Administrator and the delegated agency simultaneously.

EPA received several comments that stated that exploratory sources should not be exempt from NOI and emission control requirements. Exploratory sources and modifications to existing sources are exempt only from § 55.4(b)(10), the requirement to submit "such other information as necessary to determine the source's impact in onshore areas." Because the NOA will automatically be designated as the COA for exploratory sources (see discussion section II.D of the NPR) and the COA will not change for modifications to

existing sources, these sources will not be required to submit any information to be used for the purpose of determining the COA (i.e. an impacts analysis). Exploratory sources and modifications to existing sources that result in an increase in emissions will have to submit all other information required for consistency update purposes and will be subject to all the permitting and emission control requirements of the COA. In addition, should exploration lead to development and production, proposed sources will be subject to the full NOI and COA designation processes. Exploratory sources are discussed further in § I.E below.

E. § 55.5—Designation of the Corresponding Onshore Area ("COA")

Under section 328(a)(4)(B), the COA is assumed to be the NOA, but the Act gives the Administrator the discretion to designate a more stringent area as the COA if the area meets certain other criteria.

Proposed Exploratory Sources

The substance of this section of the rule was not changed significantly, but clarifying language was added in response to comments. The added language states that COA designations apply only to exploratory sources that are located within 25 miles of states' seaward boundaries. Another minor change clarifies that exploratory sources are not subject to those requirements of § 55.5 that relate only to the designation of the COA.

The content of this section resulted in several significant comments that are discussed for clarification, although they did not result in changes to the rule. Some commenters objected to EPA's proposal to make presumptive determinations of the COA for exploratory sources. Although exploratory sources are of admittedly limited duration, they emit significant amounts of nitrogen oxides (NO_x) while in operation. Commenters objected that areas possibly affected by emissions from these sources would be deprived of the chance to request COA designation. EPA concluded that this concern was outweighed by the need to prevent overly burdensome regulations. As previously stated in the NPR, EPA has determined that it is unreasonable to require a source that will operate for three or four months to undergo an administrative procedure that may last up to eight months. If the exploratory operation results in a plan to develop the site for production, that proposed source will be subject to all the requirements of § 55.5 for the designation of a COA. The Administrator may reconsider presumptive COA designations for exploratory sources in the future if presumptive determinations appear to be interfering with an area's ability to protect or attain ambient standards or comply with PSD, or if other conditions indicate that a review is warranted.

Many comments were received stating that exploratory sources should not be exempt from regulation and control requirements. In fact, exploratory sources are subject to the requirements of this part. In addition, exploratory sources are required to submit an NOI, thereby initiating the consistency review process. If necessary, a consistency update will be performed and the proposed exploratory source shall then be required to comply with the updated requirements of the NOA.

Requests for Designation

The final rule contains a change to the procedural requirements for COA designation requests. In response to comment, § 55.5(b)(1) has been modified to require the agency requesting COA designation to notify the chief air pollution control officer of the NOA and the owner or operator of the proposed source at the same time the request is submitted to EPA. This change will facilitate information transfer among affected parties.

Section 55.5(b)(1) also contains the first instance of a change that is repeated throughout § 55.5. The words submission and submittal are replaced with receipt and received, respectively. This change lends certainty to the timing of events that are to occur pursuant to this section. In the NPR, every significant date in this section was related to the date the NOI was submitted. As a practical matter, the Administrator cannot know when the NOI is submitted, only when it is received. Thus, this aspect of the change allows EPA to initiate the COA process with certainty. The COA process has the potential to last eight months; it is essential to ensure that it does not last any longer than planned. Another ramification of this word change is that the burden now lies with the requesting area to assure that EPA receives the deliverable items (i.e. COA requests and demonstrations) by the date specified. If the Administrator does not receive a deliverable item, the COA will be designated by default.

If an air pollution control district wants to be designated as the COA, it must submit a demonstration showing that the criteria of § 55.5(b)(2) are met. In the NPR, EPA solicited suggestions to more explicitly define the parameters of the demonstration and criteria. Two of the three statutory criteria use the undefined term "reasonably expected." Because this term can be broadly interpreted, EPA specifically requested comment on possible interpretations. After a thorough review of the comments received, it was determined by EPA that the Administrator must be allowed to exercise discretion in the evaluation of each COA request. In part, the large number and variability of suggestions received contributed to EPA's decision. Each suggestion had merit if applied under specific circumstances, but no single suggestion could be logically applied in every case. The rule applies to a variety of local environments and trying to set rigid criteria for evaluating COA requests limits the flexibility of the requesting area to tailor the demonstration to their situation.

In response to an overwhelming number of comments, § 55.5(c) of the final rule has been revised to allow the delegated agency that is designated as the COA to exercise all delegated authority. The NPR stated that if the COA was not the NOA, EPA would implement and enforce the rule. Commenters argued that permit engineers at the delegated agency would have expertise developed through implementing their own regulations, while EPA's permit engineers would be less familiar with the applicable requirements of the COA. EPA concurs with this argument. If there is no delegated agency in the COA, EPA will implement and enforce the requirements of the rule. EPA may also choose to implement and enforce the requirements of this rule if the NOA and the COA are in different states.

In the NPR, every modification to an existing source that required a preconstruction permit would have triggered the COA designation process. Some commenters requested that EPA consider modifying the rule to stipulate that the COA for each source shall be designated only once in the source's lifetime. Comment to the contrary was also received. The final rule has been modified so that an OCS source will be subject to the COA designation process only once. The rule still requires an NOI to be submitted when an existing platform is modified, but only the consistency update process will be triggered by the NOI. The statute makes no mention of reevaluating the COA, and this approach will ensure a consistent and stable permitting regime, as is the case onshore. Corresponding changes were also made to § 55.4, the section that contains the requirements of the NOI process because it is the NOI

that actually triggers the COA designation process.

Offset Requirements

Section 55.5(d) of the rule has changed significantly as a result of comments received by EPA. The first change is the addition of language that requires all offsets to be obtained in accordance with the requirements of the Act and the regulations thereunder. This is simply a clarification and mirrors the language of the offset requirements in § 55.7, Exemptions.

The substantive requirements of the offset provisions contained at § 55.5(d) have undergone several changes as a result of comments received. As proposed, the rule would not have required any offset penalties or discounting based on the distance between the proposed source and the source of offsets when the offsets were obtained on the landward side of the proposed OCS source. Offsets obtained on the seaward side of the proposed source would have been subject to distance discounting and penalties in the same manner that those requirements are applied onshore. EPA's rationale for this proposal is explained in detail in the NPR. Put simply, EPA believed that onshore emission reductions would yield greater air quality benefits in the onshore nonattainment area than emission reductions on the OCS. Many onshore regulatory agencies agreed that it would be preferable for OCS sources to obtain offsets onshore. However, these agencies expressed concern that complete elimination of distance based penalties could result in OCS sources obtaining onshore offsets that would not provide actual air quality benefits in the affected nonattainment area. Each onshore area has crafted offset requirements with the aim of reducing emissions and impacts in the areas that experience violations of the ambient standards.

Key comments focused on the fact that EPA's proposed offset requirements would not necessarily achieve EPA's goals as described in the NPR. Commenters stated that not all onshore emission reductions have a beneficial effect in the nonattainment area, even if the emissions reductions occur in the same air basin, NOA, or COA. After review of the comments, EPA concluded that the offset requirements in the NPR were inadequate to consistently achieve the desired result of producing a net air quality benefit in the onshore nonattainment area.

The offset requirements of the final rule have been revised to allow the offset requirements of the COA to be applied to OCS sources in a manner consistent with the underlying goals and technical rationale used by the COA to determine its offset requirements. The revisions, discussed below, address the concerns of most commenters and still provide incentive for OCS sources to obtain their offsets from the landward side of the OCS source. The changes reflect EPA's position that distance discounting and penalties serve a useful purpose when they are applied in a manner consistent with the assumptions upon which they are based.

The offset provisions of the final rule create three geographic zones, each with different requirements for the purpose of applying distance penalties. The first zone lies seaward of the OCS source, the second zone lies between the OCS source and the state seaward boundary, and the third zone extends from the state seaward boundary inland. In each zone the offset ratio applied shall not be higher than the highest offset ratio required onshore, provided that a net air quality benefit is achieved.

Offsets obtained in the first zone are subject to all the offset requirements of the COA, and any distance penalties are calculated based on the distance between the OCS source and the source of offsets. Offsets obtained in the second zone are obtained at the base ratio required in the COA, and no distance penalties will apply. Offsets obtained in the third zone are subject to the offset requirements of the COA. For the purpose of calculating the distance between the OCS source and the source of offsets, a straight line shall be drawn from the site of the OCS source to the source of offsets. The point at which this line crosses the state seaward boundary shall be treated as the site of the OCS source for the purpose of offset requirements.

No negative comment was received on the application of distance penalties to offsets obtained seaward of the OCS source, and these offset requirements are unchanged from the NPR. The rule does not apply distance penalties to offsets obtained between the OCS source and the state seaward boundary, which avoids creating a disincentive to obtain offsets from the landward side of the OCS source. Finally, when offsets are obtained from within state boundaries, offset penalties apply, but the OCS source is not penalized for the distance between the OCS source and the state seaward boundary. Treating the OCS source as if it were located at the state seaward boundary allows the onshore offset requirements to function in the manner originally intended. This eliminates the concern of EPA and other commenters that application of onshore offset requirements might unintentionally provide an incentive for an OCS source to obtain offsets far from the nonattainment area.

The NPR and the final rule state that an OCS source may obtain offsets from the NOA, the COA, and from OCS sources with the same NOA or COA. The NOA is likely to experience impacts from the OCS source; it is therefore appropriate to allow offsets to be obtained from sources located within the NOA. Since some onshore areas prohibit sources from obtaining offsets outside their area of jurisdiction, it was necessary to include language which supersedes such geographic restrictions. This provision was not meant to contradict or supersede any other requirements of the COA's regulations or of part 55. The rule now clarifies that the OCS source must comply with all other offset requirements of the COA and this part, including distance penalties. The language of the offset requirements has also been modified to make it clear that modifications are subject to offset requirements.

Administrative Procedures and Public Participation

A very large number of commenters expressed concern regarding public participation. In response to these comments, § 55.5(f) now states more clearly that public comment will be taken on preliminary COA designations before they are made final. Another change to this section eliminates the obligation of the Administrator to issue a separate document to respond to comments. This requirement is redundant because the Administrator must prepare a written justification of the COA designation setting forth the reasons for the decision. Since public comment must be considered in making the designation, this justification will address the comments.

Final Designations of COAs

The final rule designates the COAs for existing and proposed OCS sources adjacent to California. No changes have been made from the COA designations proposed in the NPR. EPA is designating the COAs for these sources in order to facilitate their timely compliance with part 55. In making these designations, EPA is not making or implying a decision as to the status of these facilities pursuant to section 111(a) of the Act for the purposes of compliance with the requirements of this part.

The NPR stated that the proposed COA designations would be included in the final rule unless commenters submitted sufficient documentation to

demonstrate that EPA should reconsider the proposed COA for a source. Comments were submitted requesting that EPA change some of the proposed COA designations. Although these comments contained logical justifications for changing the COA for specific sources, none contained a stringency analysis, a key criterion for requesting COA designation. EPA does not have the discretion to designate a COA other than the NOA unless a determination is made that the requesting area has more stringent requirements for the control of air pollution than the NOA. One commenter requested that EPA delay all the COA designations for six months to allow time to prepare a stringency analysis. Existing sources have only two years from promulgation of part 55 to come into compliance with the rule, and a six month delay would jeopardize their ability to meet the compliance deadline. For these reasons EPA is making final designations of the COAs for the existing and proposed platforms adjacent to California, as listed below.

The South Coast Air Quality Management District is designated as the COA for the following OCS facilities: Edith, Ellen, Elly, and Eureka.

The Ventura County Air Pollution Control District is designated as the COA for the following OCS facilities: Grace, Gilda, Gail, and Gina.

The Santa Barbara County Air Pollution Control District is designated as the COA for the following OCS facilities: Habitat, Hacienda, Harmony, Harvest, Heather, Henry, Heritage, Hermosa, Hidalgo, Hillhouse, Hogan, Houchin, Hondo, Irene, Independence (formerly named Iris), the OS & T, and Union A, B, and C.

F. § 55.6—Permit Requirements

Section 55.6 contains requirements to enable EPA or a delegated agency to issue preconstruction and operating permits in accordance with onshore federal, state, and local regulations for OCS sources within 25 miles of states' seaward boundaries and establishes federal permitting requirements for OCS sources beyond 25 miles of states' seaward boundaries. As discussed in the NPR (section II.K.) and section I.K below, the Administrator will retain authority for the implementation and enforcement of the OCS regulations beyond 25 miles of states' seaward boundaries.

Permit Applications

This section requires that approval to construct or permit to operate applications submitted by a new or existing OCS source must include a description of how the source will comply with all the applicable requirements of this part. In response to several comments, this section has been amended to require that the application also identify those requirements that have been proposed by EPA for incorporation into this part. This will ensure that the permitting agency and the applicant have identified all the requirements to which the source will be subject and allows the applicant to identify any control technology requirements that the applicant believes are technically infeasible or will cause an unreasonable threat to health and safety. In addition, to help ensure that the OCS source meets requirements that are consistent with onshore requirements, the condition set out at § 55.6(b)(2) states that the permit application must not be submitted until any consistency update that the Administrator determines is necessary has been proposed. This requirement was included in response to numerous comments received on the proposed consistency update procedures. The consistency update procedures, including the deadlines specified for the Administrator, are discussed in detail in section I.L. below.

Modification of Existing Sources

Section 55.6 of the NPR exempts from preconstruction requirements (new source review requirements and preconstruction permits) those existing sources that undertake modifications solely to come into compliance with part 55 within 24 months of promulgation of this part, providing such modifications do not result in an increase in emissions of any regulated pollutant. Those sources not requiring a preconstruction permit must submit a compliance plan to the permitting agency. Numerous comments were received on how to ensure that existing sources come into compliance within 24 months from promulgation of part 55 in light of EPA's exemption of these sources from preconstruction requirements for modifications required to obtain compliance. The comments ranged from several assertions that all modifications made to come into compliance with the regulation should require NSR or preconstruction permits prior to modification, to a recommendation that only modifications that result in an increase of emissions above some unspecified *de minimus* level should be subject to any compliance review at all. Several commenters stated that sources would make costly modifications to facilities that may not meet onshore requirements and subsequent enforcement would be difficult.

For the most part, commenters agreed with the provision contained in the NPR that NSR requirements (such as best available control technology or modeling) should not be applied to these sources, but they felt that preconstruction permits or enforceable compliance plans should be required. Specifically, several commenters stated that § 55.6 should be modified to require that the applicant submit a compliance plan for approval by the Administrator or delegated agency prior to performing the modification and that the regulation should make provisions for the delegated agency to charge fees for the review and approval of the plan. Other commenters suggested that the regulation give a timeline for agency review of the compliance plan.

EPA is concerned that preconstruction permits or compliance plans that require approval and public comment would not leave existing sources with enough time to come into compliance. In addition, EPA does not believe that compliance plans must be enforceable to be effective. If existing OCS sources do not meet the compliance deadline, they will be in violation of this part and subject to enforcement action. The intent of a compliance plan is to ensure that existing sources make appropriate modifications in a timely manner in order to comply with all the applicable requirements of this part within 24 months of rule promulgation. The compliance plan should facilitate communication between the source and reviewing agency, which should in turn expedite the operating permit review and eliminate costly oversights. EPA maintains that existing sources must meet all applicable requirements of part 55 within 24 months, regardless of the status of the compliance plan, and that sources subject to COA operating permit requirements are required to obtain such permits within 24 months of promulgation of this part.

In response to the above comments, § 55.6(b) has been amended to require that the reviewing agency provide written comments to the source within 45 days of receipt of the compliance plan. The source must in turn respond to such comments as required by the reviewing agency. This will ensure that both the reviewing agency and existing source benefit from the compliance plan and that the intended modification will indeed meet the onshore requirements.

In addition, language was added to § 55.6(b)(8)(iii) to address DOI's concern with the condition that modifications exempt from preconstruction

requirements must not result in an increase in emissions of any regulated pollutant. They believed that onshore agencies would interpret the preconstruction exemption to require that all modifications required to comply with this rule that result in an increase in emissions would be subject to NSR requirements irrespective of any *de minimus* levels that may exist in onshore NSR rules. The applicable definition of modification, however, is that definition given by the applicable federal, state, or local requirements incorporated into this part. Thus, only sources that increase emissions above any *de minimus* levels included in the applicable rules will be subject to preconstruction requirements.

Finally, language was added to this section to require that, as with permit applications, any requests for exemption from control technology requirements must be submitted with the compliance plan. The administrator or delegated agency will act on the exemption request in accordance with the procedures set forth in § 55.7.

Exemptions

Several commenters pointed out that the timeline for the exemption procedure may conflict with mandatory permit issuance requirements of state and local agencies, especially when an exemption request is appealed to the Administrator (see § 55.7). Language has been added to § 55.6(a)(2) to ensure that a final permit will not be issued until a final determination is made on any exemption request submitted with the required permit application.

Administrative Procedures

A few comments were received regarding the NPR's reference to 40 CFR part 124. As stated in the NPR, when issuing preconstruction or operating permits, EPA will use the applicable administrative and public notice and comment procedures of § 55.6 and 40 CFR part 124, Procedures for Decision Making. Part 124 contains regulations on the issuance of EPA permits and will be amended to reference the issuance of federal OCS permits. Where the Administrator delegates the OCS permitting requirements to a state or local agency, that agency must issue permits in accordance with the requirements of § 55.6, except for the administrative and public participation procedures of the federal rule, for which the agency may substitute its own procedures. Comments stated that the applicable procedures that EPA intends to apply from part 124 must be made explicit. Section 55.6 now specifies that until part 124 has been modified to reference permits issued under this part, the Administrator will follow the procedures in part 124 used to issue PSD permits.

During the public comment period, industry expressed the concern that given the complex leasing, owner, and operator relationships on the OCS it would be easy to postulate conditions under which the owner of an OCS source would have no constructive knowledge of the requirements of the permits obtained by an applicant. Once commenter suggested that applicants should be required to inform contractors and sub-contractors of any conditions of the permits issued under part 55 that might affect their equipment or operations. Section 55.6 has been amended to include the above suggestion. Notification of future owners and sub-contractors is often a requirement of federally issued PSD permits.

Several comments were received that recommended the regulation should allow the delegated agency 10 days to send a copy of any preliminary determination and final action to the Administrator. Section 55.6 of the NPR requires the delegated agency to send a copy of any preliminary determination or final permit action to EPA on the date of the determination. By "date of determination" EPA meant the date that the draft or final permit is issued to the applicant or made available for public review and comment. EPA needs simply to receive a copy of all such actions. A delay of 10 days could effectively shorten EPA's review time during the public comment period if such period begins on the date of draft permit issuance. The condition set out in § 55.6(a)(5)(iii) has been modified to clarify this intent.

Transitional Permit Applications

In responding to comments, EPA discovered a discontinuity in the proposed rule for sources that commence construction during the period between proposal of this part on December 5, 1991 and promulgation of this final rule, which is the date of publication of this notice in the **Federal Register**. Section 328(a)(1) of the Act provides that "new OCS sources" must be "in compliance" as of the date EPA's final OCS rules are promulgated. Under section 328(a)(4)(D), a "new OCS source" is defined by reference to CAA section 111(a) (42 U.S.C. 7411(a)). Under that section, a source is new if construction of that source commences after the applicable regulation is proposed in the **Federal Register**. Therefore, an OCS source that is covered by this rule, and that commenced construction after December 5, 1991 (the date this rule was proposed), is a new OCS source that must be "in compliance" on the date of promulgation.

The OCS rule includes, among other things, preconstruction review (NSR and PSD) and other permitting requirements. However, the source can not obtain such permits prior to promulgation of this rule, because the permitting authority does not have the jurisdiction and authority necessary for action until promulgation of the rule. It is thus impossible for the source to be "in compliance" by the date of promulgation to the extent that phrase is interpreted to mean in receipt of final, valid permits.

As the permitting process typically takes several months or longer to complete, the source would potentially be in the position of having to cease all activity for the time it takes to get a permit or continuing to construct and operate in violation of federal law. The situation would occur regardless of whether the source was in compliance with all the applicable air pollution control requirements. Although, in theory, it may have been technically possible for such sources to have prepared a permit application and made preliminary contracts with the projected permitting authority in advance of promulgation, EPA does not believe the necessity or availability of such a course was sufficiently apparent prior to today's final action to require sources to have done so. Moreover, even if an affected source took these actions, a permit likely still could not be issued immediately (e.g., before a PSD or NSR permit may be issued, the public must first be provided an opportunity to comment on the draft permit).

EPA believes that Congress did not intend such a result for these sources. Nothing in the statute or legislative history suggests that Congress intended that OCS sources that have lawfully commenced construction or operation in the period between proposal and promulgation, cease construction or operation while they engage in a potentially lengthy permitting process. Instead, EPA believes that Congress desired that these sources immediately comply with all substantive provisions and that they immediately commence the process of receiving all necessary permits. To this end, provisions for receiving valid permit(s) without unduly or unnecessarily disrupting ongoing activities for these limited number of sources have been included in this final rule.

EPA has determined that, for purposes of permitting only, compliance by

prepromulgation new OCS sources with the transitional permit rules, set forth in § 55.6(e), satisfies the requirements of section 328(a) of the Act. These provisions are designed to assure continuous compliance with all substantive requirements and provide assurance that public health or welfare will not be impaired. In essence, these rules contain the same requirements that the source would have to comply with if it had a valid permit except that the following requirements replace the obligation to have a valid permit on the date of promulgation of this rule:

1. Pursuant to § 55.6(e), within 30 days of promulgation the source must submit to the permitting authority a transitional permit application (TPA). The essential information required in the TPA includes a complete description of the source, a listing of all requirements that apply to the source directly, and, for sources required to perform an air quality analysis (such as under PSD), a screening analysis that demonstrates whether the source has or is expected to cause or contribute to a violation of any ambient air quality standard or exceed any applicable increment;

2. If the source is required to obtain a preconstruction permit, the source must set forth in the TPA, proposed emission limits that reflect utilization of the required control technology, including BACT or LAER. The TPA must demonstrate that the source is in compliance with these proposed emission limits;

3. The TPA must include documentation that source emissions are currently being offset, or will be offset if the source has not commenced operation, at the ratio required under this part, and documentation that those offsets will meet the requirements of this part by the date the final permit is issued;

4. The source must expeditiously complete its permit application; and

5. The source may not operate if the permitting authority determines that the source will cause or contribute to a violation of an ambient air quality standard or would exceed an applicable increment.

EPA believes that 30 days is a reasonable period for filing the TPA; it reflects our determination as to the earliest date affected sources could reasonably be expected to comply with this requirement. This limited period is needed for the source to receive and comprehend the rule once published, accumulate the information called for by the regulations, and conduct the requisite air quality and technology analyses.

Under this scheme, EPA retains the authority to preclude sources from constructing or operating if it finds that the source has failed to fully satisfy its obligations under the regulations. In other words, if the source has filed an incomplete TPA, unduly delayed in completing its permit application, failed to adhere to an applicable control requirement, projected a plainly inadequate BACT or LAER emission limit (or failed to adhere to the limit projected), or if it can be expected to interfere with attainment of an ambient air quality standard or exceed an applicable increment, EPA may take enforcement action.

Response to Comments

Although not requiring modifications to § 55.6, there are several permitting issues that EPA believes merit additional clarification. Comments related to these issues are discussed below. The reader is referred to the Response to Comment document contained in EPA Air Docket A–91–76 for a more detailed discussion of these issues and other comments received on this section.

Section 55.6(b)(4) requires that an approval to construct expire if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. One commenter stated that it is not clear what is meant by "reasonable time" or whether this allows an exception to the 18-month requirement. "Reasonable time" should be read as that continuous construction schedule defined in the permit application and is not an exception to the other criteria. Section 55.6 further allows the 18 month period to be extended if the administrator or delegated agency believes that the applicant has made a showing that the extension is justified. This will provide flexibility for the construction of OCS sources. Sources obtaining extensions are subject to all new or interim requirements and a reassessment of applicable control technology when the extension is granted. It should also be noted that § 55.6(b)(4) does not supersede more stringent requirements contained in applicable federal, state, or local permitting regulations, as this would conflict with the intent of the statute.

Many commenters requested that part 55 specify a deadline by which existing OCS sources must apply for an operating permit. Section 328 and part 55 require that existing sources comply with the OCS rule within 24 months of promulgation of the rule. This includes obtaining, not simply applying for, any operating permits required by the COA. EPA acknowledges the commenters' concerns that existing sources may not allow enough time for the onshore area to process the permit application. However, due to the varying permit processing times of agencies, EPA does not feel it is appropriate, or in the best interest of the permitting agency or applicant, to specify an application date that may conflict with onshore timelines. Existing sources have been put on notice of the onshore requirements and need to plan accordingly to receive required operating permits by the compliance deadline.

Numerous comments stated that the permits should address impacts on non-human species and resources in addition to the protection of onshore ambient air quality standards. Specifically, these commenters stated that the near coastal environment, islands, and plant and animals, must also be protected and biological damage from deposits of surface contaminants should be addressed. These concerns are in part addressed by onshore requirements incorporated into part 55 and in other federal laws that apply independent of part 55. OCS sources subject to the PSD regulations must assess their impacts on ambient air quality, soils, vegetation, and visibility. Impacts on the resources of federal Class I areas (National Parks, Forests and Seashores), including flora, fauna, water, visibility, and cultural artifacts, must also be analyzed. In addition, section 7 of the Endangered Species Act of 1973 requires all federal agencies to ensure that any actions authorized, funded, or carried out by the agency are not likely to jeopardize the continued existence of any listed endangered or threatened species or result in the destruction or adverse modification of their critical habitat. This includes federal actions such as permits, grants, and licenses. Permits issued under the OCS regulation would qualify as such an action. The Minerals Management Service ("MMS") holds formal consultations with the Fish and Wildlife Service and National Marine Fisheries Service up to three times during the life of an OCS project to comply with this requirement. Finally, to the extent that the rule results in improved air quality, non-human species, the near coastal environment, islands, plants and animals may benefit.

A few commenters requested clarification of the term "modification" as it applies to § 55.6. One commenter rquested that part 55 specify *de minimus*

levels of emission increases to determine the applicability of this section. As stated in the NPR, the definition of modification will be that given by the applicable requirements incorporated into §§ 55.13 and 55.14, except for the purpose of determining the date that the modification must comply with this part. For two years following the date of promulgation of this part, the definitions of modification and new source given in section 111(a) of the Act shall apply for the purpose of determining whether the modification shall be treated as a new source, and consequently must comply upon promulgation of this part, or treated as an existing source and must comply within 24 months of promulgation. In brief, a physical change, or change in method of operation, commenced after December 5, 1991 (the proposal date of 40 CFR part 55) that results in an increase in emissions will cause an existing OCS source to be considered a new OCS source. Establishing *de minimus* levels would conflict with the definition of modification required by the statute and the directive that the OCS requirements applying to sources located within 25 miles of states' seaward boundaries be the same as those onshore. *De minimus* levels are set, however, in most of the applicable federal, state and local regulations that have been incorporated into part 55.

G. § 55.7—Exemptions

Section 328(a)(2) allows the Administrator to grant an OCS source an exemption from a specific control technology requirement if the Administrator finds that the requirement is technically infeasible or will cause an unreasonable threat to health and safety.

EPA intends to delegate the authority to make exemption determinations to states with adequate regulations for carrying out this part of the rule. EPA interprets the statue to require delegation of this authority if the state's regulations are adequate, since exemption determinations are simply a part of the implementation and enforcement of the rule, which EPA must delegate under section 328(a)(3). This position is unchanged from the NPR and is implicit in the language of § 55.7. Industry and DOI have both commented that the statute does not allow EPA to delegate the authority to grant and deny exemption requests. Evaluation of an exemption request is simply a control technology determination, very similar to the best available control technology (BACT) and lowest achievable emission rate (LAER) determinations. It would be ineffective to divide what is essentially a single task between two agencies and EPA does not believe that was the intent of Congress. The rule integrates the exemption process into the permitting process, which streamlines the administrative process and is a logical approach to permitting.

Request for Exemption

Concern was expressed by many commenters that the exemption procedures contained in the rule are lengthy at best and have the potential to be extended by many months due to appeals. Because this is an overriding concern for many commenters, several of the times allotted for procedures under the rule have been shortened. A source must now request an exemption within 60 days from the date EPA promulgates a requirement that does not require a permit. This is 30 days fewer than in the NPR. In addition to this change, the section now requires that existing sources that submit a compliance plan shall include all requests for exemption when the plan is submitted. For the purpose of § 55.7, these requests will be treated as requests that do not require a permit.

The final change to this section is in § 55.7(b)(4)(iv), where language has been added to require a source located beyond 25 miles from states' seaward boundaries to consult with the Administrator to identify suitable offsets. There are no analogous, offset requirements for onshore sources, so offsets for these sources must be evaluated on an individual basis. This is also addressed in § 55.7(e), as discussed below.

Delegation

Comments were received on § 55.7(c), the requirement that a delegated agency must reach consensus with the MMS and the U.S. Coast Guard ("USCG") on exemption requests. Some commenters suggested that this requirement represented an illegal delegation of authority to these agencies. These agencies have the primary responsibility for assuring that OCS operations occur in a safe manner and can provide valuable advice to ensure that no control technology believed to be unsafe will be required on the OCS. In regard to the issue of illegal delegation, there is no delegation of authority; MMS and the USCG have no authority to grant or deny a request, and if consensus cannot be reached, the request is automatically referred to the Administrator.

Two clarifying changes were made to this section in response to comments. First, the word "application" has been replaced by "permit application," and exemption requests that do not require a permit are now explicitly included. The second change is that the time allowed for the delegated agency to transmit the request and related materials has been reduced from 15 days to 5 days. This will allow the federal agencies to begin discussion with the delegated agency sooner and will facilitate reaching a consensus decision within the required time frame. If consensus cannot be reached within 90 days from the date the delegated agency received the request or application, whichever is sooner, the exemption request will be referred to the Administrator, and the decision will be more in accordance with the procedures contained in § 55.7(f). This is a change from the NPR, which simply stated that the request would be appealed to the Administrator.

The language contained in the NPR that would have allowed an extension of the consensus process has been deleted in response to comments that the procedures in the NPR were too lengthy. Similarly, to expedite the permit process in the event that an exemption request is referred to the Administrator, language has been added to § 55.7 to allow the delegated agency to issue a preliminary permit determination prior to the Administrator's final decision on the exemption request. This allows the delegated agency to proceed with the public notice and comment phase of their permitting process before the Administrator makes a final decision on the exemption request. The notice must refer to the exemption request and mention that comments related to the request must be made to the Administrator. The rule specifies that the Administrator's final decision must be incorporated into the final permit issued by the delegated agency.

Grant of Exemption

One commenter pointed out an oversight in the offset requirements; no provision was made for OCS sources located beyond 25 miles from states' seaward boundaries to obtain offsets. Language has been added to § 55.7(e) to address the acquisition of required offsets when a source located beyond 25 miles from a state's seaward boundary is granted a technical exemption. The source will be required to consult with EPA to identify suitable offsets. If the source is granted an exemption, the offsets obtained must be adequate to protect state and federal ambient air quality standards and ensure compliance with PSD.

Administrative Procedures and Public Participation

Another change attributable to comments on the NPR is the deletion of § 55.7(f)(1), which allowed the Administrator 30 days to review an exemption request and notify the source of any deficiencies. Instead, the Administrator or the delegated agency will simply proceed with deliberations on the exemption request. If any information from the source is needed, it must be obtained during the review process.

This section has also been revised to clarify the implicit intent of the NPR; an exemption request shall be considered part of the permit application. This is clarified at § 55.7(f)(1), which now specifies that if a permit is required, the applicable procedures to process the permit will be used to simultaneously process the exemption request. EPA will use the procedures at 40 CFR part 124 and a delegated agency will use its own administrative procedures to process a permit.

The majority of § 55.7(f) contains procedures to be used by the Administrator or the delegated agency in the event that an exemption request is submitted that does not require a permit. These procedures have not substantively changed from the NPR. Language has been added to allow the Administrator to use these procedures when an exemption request is referred from the delegated agency. The Administrator must make a preliminary determination on the exemption request within 30 days of referral. The Administrator or delegated agency is allowed 90 days to make this determination when there is no referral.

Language describing the appeal procedure when the Administrator of an EPA regional office ("Regional Administrator") denies an exemption request has been removed in the final rule. This language was redundant because the Regional Administrator's decision may be appealed to the Administrator by petitioning for administrative review in accordance with § 55.7(f)(5).

H. § 55.8—Monitoring, Reporting, Inspections, and Compliance

Section 55.8 adopts the monitoring, reporting and inspection authority of section 114 of the Act. Only one change was made to this section. EPA added language to the final rule clarifying that all monitoring, reporting, inspections and compliance requirements of the Act apply to OCS sources. This will include the upcoming rules for Enhanced Monitoring and Compliance and Certification of Compliance when such rules are promulgated pursuant to section 114 of the Act.

Several commenters emphasized the importance of good monitoring and reporting requirements and requested that EPA ensure that state and local requirements are adequate if authority is to be delegated. EPA agrees that good monitoring and reporting requirements are essential to effective implementation. The statute requires EPA to evaluate the adequacy of the program of the state agency that is requesting delegation. Therefore, EPA will ensure that state and local programs contain effective monitoring and reporting requirements prior to delegation.

I. § 55.9—Enforcement

Section 55.9 restates the requirement set out in section 328 of the Act that all OCS sources shall comply with this part and failure to comply shall be considered a violation of section 111(e) of the Act. The section adopts the enforcement authority of sections 113, 114, 120, and 303 of the Act. Several commenters indicated that section 304 of the Act should be included also. This was an oversight and was corrected in the final rule. EPA also made explicit that all the enforcement authority of the Act applies to OCS sources.

J. § 55.10—Fees

Section 55.10 establishes the requirements under which EPA will collect operating permit fees, as discussed in the NPR. No changes were made to this section of the rule.

K. § 55.11—Delegation

This section sets forth the requirements for a state or local agency to receive delegation to implement and enforce the OCS regulation in accordance with section 328(a). The NPR generated a significant number of comments on this section.

The California air pollution control districts pointed out that they, not the state air pollution control agency (the Air Resources Board), are the state agencies with authority to permit air pollution sources and enforce air pollution regulations. They contend that EPA should delegate implementation and enforcement authority to them and not the state (through the Governor). After considering the air pollution control districts' concerns, EPA maintains that it is more appropriate for the Governor or the Governor's designee to make the request on behalf of the local air pollution control district. This will eliminate the need for EPA to make a state law determination of which agency has the proper authority for implementing and enforcing the OCS regulations, yet allows flexibility for the Governor to designate the local air pollution control district as the designee.

Many commenters wanted the OCS rule to be more explicit as to what authority the state has, after delegation, to use its administrative procedures, such as variances. EPA maintains that a state may use any administrative procedure that it has under state law to implement and enforce the requirements of this part. However, as required by the statute, part 55 will only be delegated to a state or local agency that demonstrates that these administrative procedures are adequate to implement and enforce the requirements of this part (see also the discussion of state administrative procedures in section I.N.). As onshore, a variance will not shield a source form enforcement action by EPA.

A large number of commenters expressed concern with the revocation of delegation procedure in the NPR. Several commenters argued that EPA does not have the authority to revoke delegation, since revocation is not addressed in the statue. EPA disagrees, as revocation of a grant of authority if the delegated agency is not performing adequately is basic to governmental functioning. Many commenters objected to the language in the NPR that stated that EPA would revoke the delegation if "the requirements of this part are being implemented or enforced in an inequitable, arbitrary, or capricious manner." After consideration of the comments, EPA is modifying the language such that the basis of revocation will be inadequate implementation and enforcement. The rule has been adjusted so that the concerns over improper use of OCS regulations are now addressed in § 55.1, as discussed above in section I.A.

Several commenters questioned why EPA was not delegating authority for sources beyond 25 miles from states' seaward boundaries. They pointed out that the statute required EPA to delegate all of its authority under section 328 if the state program was adequate. However, for sources beyond 25 miles, only federal requirements were incorporated into this part. In this situation, EPA believes that it is more efficient to have the federal government retain authority than to have a state agency try to implement and enforce purely federal requirements. The state agency would have to treat sources within 25 miles with one set of rules and procedures and sources beyond 25 miles

with a second set of rules and procedures.

A number of commenters stressed the importance of public comment and requested that EPA ensure that public comment procedures are required and maintained if the program is delegated. EPA modified the criteria for delegation to include a requirement that a delegated agency have adequate procedures for public comment.

L. § 55.12—Consistency Updates

Because onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements "as necessary to maintain consistency with onshore regulations." In the NPR, EPA described the criteria it would use to evaluate rules to be incorporated via consistency updates. EPA proposed that state and local rules must be rationally related to the attainment and maintenance of state or federal ambient standards or part C of title I, equitable, and must not be arbitrary or capricious. EPA proposed to update the rule annually, with NOIs also triggering consistency reviews. EPA solicited comment on the appropriate frequency of consistency updates. Most comments that EPA received regarding this portion of the rule concerned the timing and content of the consistency updates and the use of "inequity" as a criterion for screening onshore rules.

The statute mandates that OCS sources be subject to the same requirements that would be applicable if the source were located in the COA. At the same time, the statute does not provide a mechanism by which state law can automatically (and instantaneously) apply on the OCS. Because EPA must incorporate onshore requirements by formal rulemaking, inherent delay is introduced.

Several commenters opined that the consistency update procedure should provide for onshore agency submittal of OCS rules and EPA action in a timely manner. Some had detailed suggestions as to the events which should trigger consistency updates and the frequency with which EPA should do them. Commenters also expressed concern that higher emission levels could be permanently permitted if consistency updates were not done in a timely manner. EPA considered all comments and has revised this section to include more specific procedures and details regarding the timing of consistency updates.

In areas where there is OCS activity, EPA will review onshore requirements at least annually. If the Administrator finds that the requirements of part 55 are inconsistent with those onshore, EPA will update the appropriate portion of part 55. Also, as proposed, EPA will initiate a consistency review upon recipe of an NOI. In the case where the NOI is for a source that does not require a COA designation (a COA was previously determined), EPA will propose a consistency update, if needed, within 60 days of receiving the NOI. If the NOI is for a source that requires a COA designation, EPA will take action, if needed, in accordance with the following schedule:

- If no adjacent areas request to be designated as the COA and the NOA is automatically designated as the COA, EPA will publish a proposed consistency update no later than 15 days after the default COA determination (within 75 days after the NOI is received by EPA).
- If an area other than the NOA requests to be the COA but fails to submit the required demonstration, EPA will publish the proposed consistency update no later than 15 days after the due date for the demonstration has passed (within 105 days after the NOI is received by EPA).
- If an area other than the NOA requests COA designation and submits the required demonstration, EPA will publish the proposed consistency update no later than 15 days after the date of the final COA determination.

In addition, if a state or local district submits an applicable rule to EPA (with proof of adoption) that meets the criteria for incorporation into part 55, EPA will take action on that rule by the end of the following calendar quarter. This approach enables EPA to process rules in batches, thus reducing the time and expense involved in publishing multiple Federal Register notices. It also enables EPA to postpone unnecessary rulemaking in areas where there is no activity and thus avoids expending resources on activities that will have no effect on air quality.

An OCS source may not submit its permit application until a consistency review is completed and, if appropriate, an update of part 55 has been proposed. However, sources are only required to comply with those requirements that are adopted into part 55 as of the date the final permit is issued. EPA intends to promulgate the final update prior to the final permit issuance. This puts the consistency update process and the permit review process on a parallel timeline. EPA believes that the approach it has taken to consistency updates will minimize the possibility of sources being permitted under outdated requirements.

The use of the term "inequitable" in the NPR was the cause of considerable concern to many commenters. Commenters stated that the term "inequitable" is vague and undefined and has no basis in the statute. Several suggested that EPA eliminate or objectively define "inequitable." By using the word "inequitable" EPA was attempting to clarify the terms "arbitrary" and "capricious." However, to avoid any confusion, EPA has deleted all references to this term from the rule. Language has been added to § 55.1 to clarify that EPA will not incorporate rules that are designed to prohibit exploration or development of the OCS.

The inclusion of language prohibiting the incorporation of arbitrary and capricious rules was negatively commented on by several parties. Several commenters stated that consistency updates may not consider whether a state or local onshore regulation is arbitrary or capricious. Others said that EPA is already prohibited from adopting arbitrary and capricious rules so the use of these terms is confusing and redundant. A number of commenters recommended that the terms arbitrary and capricious be deleted from § 55.12.

Pursuant to section 706(2)(a) of the Administrative Procedures Act, EPA must consider whether any action it undertakes is arbitrary or capricious. All federal rulemaking is subject to this standard. Inclusion of this language neither expands nor limits EPA's pre-existing authority and obligation. EPA has included this language to emphasize that state or local rules incorporated into the OCS rule must bear a rational relationship to the purposes of the rule, as discussed in section I.A. of this preamble, and may not be designed expressly to prohibit offshore development.

Some commenters objected to EPA incorporating rules via notice and comment rulemaking. They stated that onshore rules should automatically apply. However, the statute requires that EPA update part 55 to maintain consistency with onshore requirements. In consultation with the Department of Justice, EPA has concluded that Congress did not intend that changes in state or local law would automatically change the content of federal OCS law. Therefore, before a state or local rule or regulation may be applied to OCS sources, it must be incorporated into part 55 by federal rulemaking, which includes mandatory notice and comment procedures.

A few commenters stated that if EPA precludes onshore agencies from independently changing the requirements of § 55.14, then EPA must ensure that the rules applied to the OCS are "the same." In contrast, another

commenter stated that only federally approved state implementation plan ("SIP") rules should be incorporated into part 55. The Act clearly specifies that EPA must promulgate requirements to control OCS sources of air pollution that are "the same as" or "consistent with" onshore requirements. If EPA were to rely solely on the federally approved SIP, it would fail to meet its statutory obligation because, in a number of cases, current state or local requirements that would apply to OCS sources have not been incorporated into the SIP. This could be the case for any number of reasons. There is no basis for EPA to exclude from part 55 rules that are not part of a federally approved SIP.

While EPA will update the rule as required by the statute to maintain consistency, EPA cannot guarantee that all requirements will be exactly "the same as" onshore requirements for the following reasons:

1. The Administrator must comply with the general prohibition against arbitrary and capricious rulemaking. (Section 307(d) of the Act or section 706(2)(a) of the Administrative Procedures Act.) Therefore, if EPA finds that inclusion of a state or locally adopted rule would be arbitrary or capricious, EPA will not incorporate it into part 55.

2. Under section 328(a)(1), state and local requirements that apply to OCS sources are limited to those that pertain to the control of pollutants (and their precursors) for which there is a state or federal ambient standard, or pertain to the requirements of part C of title I of the Act. Therefore, state and local requirements that are not related to the attainment and maintenance of ambient air quality standards or part C of title I will not be incorporated into part 55.

M. § 55.13—Applicable Federal Requirements

Section 55.13 contains requirements that apply to all OCS sources. Under § 55.13, PSD, and to the extent they are rationally related to protection of ambient air quality standards or part C of title I, NSPS and NESHAPS apply. When promulgated, EPA will incorporate the requirements of the federal operating permit program (40 CFR part 71) into part 55. When part 55 is amended, part 71 will apply to sources located more than 25 miles beyond states' seaward boundaries. Part 71 requirements will also apply to sources located within 25 miles if the requirements are in effect in the COA. (See section B. for a discussion of the general applicability of the Act.)

Some commenters suggested that some or all of these requirements should not apply to sources located more than 25 miles beyond states' seaward boundaries. Section 328 does not mandate the precise content of the OCS requirements for sources located on the "outer" OCS. However, it does require that EPA "establish requirements to attain and maintain federal and state ambient standards and to comply with the provision of part C of title I." Within these bounds, EPA has latitude to establish requirements that apply under section 328 to sources located more than 25 miles beyond states' seaward boundaries. EPA believes that the requirements incorporated into this part are necessary to fulfill its statutory obligation.

It is possible that additional requirements for "outer" OCS sources may be necessary to protect onshore air quality. This could occur, for example, if the density of OCS sources in a specific area cumulatively caused negative impacts on onshore air quality. As discussed in the NPR, EPA will promulgate such requirements in future rule makings if the Administrator deems such action necessary. EPA has added language to § 55.13 of the rule to clarify this.

NSPS regulations often define a new source as any source that was constructed or modified after the date the NSPS was proposed. Language has been added to the rule to clarify that sources determined to be existing OCS sources pursuant to § 55.3(e) will not be considered new sources for the purpose of compliance with NSPS adopted prior to December 5, 1991. This ensures that existing sources will not be required to meet NSPS intended for new or modified sources.

Sections 55.13 and 55.14 were amended to clarify that language contained in onshore requirements adopted prior to promulgation of part 55 that restricts the applicability of the requirements to onshore sources or sources in state waters, does not apply. This provision was added to ensure that offshore requirements are the same as onshore requirements and to preserve flexibility for states to tailor their future rules to OCS sources and the marine environment, should they so choose.

N. § 55.14—Applicable Requirements of the COA

Section 55.14 contains the requirements that apply to sources located within 25 miles of states' seaward boundaries. Requirements applying to such OCS sources must be "the same as" or "consistent with" onshore requirements, as well as rationally related to the attainment and maintenance of federal or state ambient air quality standards or part C of title I. EPA therefore has little flexibility in establishing requirements under section 328 that apply to nearshore OCS sources.

The format of this section was changed to make it consistent with § 55.13 and to reflect a change in the method of incorporation by reference, as required by the Office of the Federal Register. This change in format is administrative only, and does not alter the requirements of this section.

A few other minor changes have been made to this section of the rule. Language was added to clarify that only those substantive 40 CFR part 52 (federally approved SIP) requirements that are rationally related to ambient air quality standards or part C of title I shall apply to OCS sources. Also, several commenters provided suggestions regarding specific rules that had or had not been listed. EPA's analysis of these rules is contained in the response to comments document. Only a few minor changes were made to the rule list. Typographical errors and mistakes in adoption dates or rule titles were corrected. No rules were added to or deleted from the list. Any rules identified that should be incorporated into part 55 will be proposed in a consistency update. The reader is referred to Appendix A of this part for the complete listing of requirements incorporated by reference into § 55.14.

EPA received comment on several issues related to this section that did not result in changes to the rule. Some commented that administrative and procedural rules should be included in the requirements incorporated in § 55.14. The statute, however, does not require nor is it necessary for EPA to adopt non-control requirements. Upon delegation, the onshore area will be allowed to use its administrative and procedural rules, to the same extent as onshore. The same situation that exists onshore will exist on the OCS; state and local governments can use their administrative procedures, but EPA will disregard any procedures that conflict with federal requirements and can enforce federal law in a delegated program.

Several commenters said that EPA should provide a variance mechanism for OCS sources. Variances are administrative or procedural rules, not substantive requirements, and therefore they are not incorporated into part 55. Upon delegation, districts may grant variances as they would onshore. However, state and local variance procedures are not recognized by federal law because there is no provision in the Act giving the

Administrator such authority. Agencies delegated the OCS program can use administrative tools if they do not result in any violations of federal requirements. Variances do not shield sources from federal enforcement onshore, nor will they shield an OCS source. In those instances where EPA does not delegate authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements.

Many commenters felt that all state and local rules should be included, and that EPA should not "pick and choose" or screen out rules. Also, some stated that delegated agencies must have unfettered discretion to impose all onshore rules. EPA will incorporate into the OCS rule those state and local onshore rules that comply with the statutory requirements of section 328, are not arbitrary or capricious, and are rationally related to the attainment and maintenance of ambient air quality standards and PSD. The screening criteria that EPA will apply are mandated by the language of section 328 or the general prohibition against arbitrary or capricious rulemaking with which the Administrator must comply in any rulemaking proceeding, either under section 307(d) of the Act or under the Administrative Procedures Act.

Finally, several people commented that it appeared or could be misconstrued that EPA was intending to incorporate only those requirements that were in place at the time of enactment of the Clean Air Act Amendments and would therefore be inappropriately grandfathering sources to pre-1991 control levels. In the NPR, EPA was attempting to point out that rules in place as of the date of enactment were to be considered part of an initial promulgation. Rules adopted subsequent to enactment are incorporated via consistency updates. The rule is not limited to the requirements that were in place as of the date of enactment, and in fact, contains numerous state and local rules that were adopted subsequent to that date.

II. Additional Topics for Discussion

A. Relationship Between the OCS Regulations and the State Implementation Plans

1. Emission Inventories/Attainment Demonstrations

EPA received comment that the NPR did not adequately integrate the new program into the SIP process. Commenters suggested that EPA needs to ensure that OCS sources are included in emission inventories and are tracked through the SIP process so that only surplus OCS emissions reductions are utilized in offset transactions.

EPA concurs with the proposition that OCS emissions must be included in inventories. All offsets must be surplus to emission reductions required by the SIP. The treatment of OCS emissions will be addressed in revised emissions inventory guidance. All existing sources under EPA jurisdiction are presently included in emission inventories prepared by coastal air pollution control agencies. No changes to the rule were necessary.

2. Deficiencies Incorporated Into the OCS Rule

Section 328(a) requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55, and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA is incorporating into part 55 several rules that do not conform to all of EPA's SIP guidance or certain requirements of the Act. EPA emphasized in the NPR that incorporation of a state or local rule into part 55 does not constitute or imply approval of that rule as part of the SIP. Nor does it preclude any action EPA may take in regard to deficient onshore SIPs.

EPA received comment in support of differentiating between the SIP process and the OCS consistency update process. A commenter agreed that regulations being considered for incorporation under the two different programs are subject to different standards of review, and the COA may submit OCS regulations directly to EPA, rather than through the state as in the SIP process.

Another commenter felt that EPA was attempting to weaken the rules by insisting they are less stringent than SIP requirements. The intent of EPA's discussion regarding SIP deficiencies was to explain that for the purposes of incorporation into part 55, EPA cannot use SIP approvability criteria or EPA guidance for SIP rules as a screening mechanism. This in no way weakens the OCS rule. Often rules that contain "deficiencies" may be more stringent than the federally approved version of the same rule. By incorporating all versions of applicable rules, EPA ensures that the most stringent onshore requirements will apply.

B. Regulation of Non-criteria Pollutants

Section 328(a) requires the Administrator to promulgate requirements for OCS sources "to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act." EPA reads this provision to restrict EPA's authority to regulate OCS sources pursuant to this part. (See NPR at p. 63786). The practical effect of this interpretation is that certain state and local regulations adopted for toxic air pollutants will not be adopted pursuant to section 328 of the Act.

The NPR generated numerous comments on this subject. Many commenters questioned EPA's interpretation and pointed out that this approach will result in inconsistencies between the regulation of onshore and offshore sources, which section 328 was intended to eliminate. After considering these comments, EPA still believes that its original interpretation conforms with the plain language of the statute.

However, while EPA interprets its regulatory authority under section 328 to be restricted to federal and state criteria pollutants, precursors to those pollutants, and pollutants regulated pursuant to PSD, and has accordingly limited its rule to these pollutants, EPA's general authority to apply the Act to the OCS is a separate question which is not addressed here.

III. Administrative Requirements

A. Executive Order 12291 (Regulatory Impact Analysis)

EPA has determined that neither the proposed rule nor the final rule constitutes a major action according to the criteria of Executive Order (E.O.) 12291. However, due to the relevance of potential outer continental shelf oil and gas reserves to the National Energy Strategy, an Regulatory Impact Analysis ("RIA") has been prepared.

The estimated incremental annualized cost of this rule is $5 million in 1997. This estimated incremental cost is expected to reach $29 million in 2010 primarily as a result of increased exploration, construction, development, and production. This rule will result in the reduction of 610 tons of volatile organic compound emissions and 730 tons of nitrogen oxide emissions in 1997. The projected emission reductions in 2010 are 2400 tons of volatile organic compounds and 3800 tons of nitrogen oxides. These pollutants are precursors to several pollutants for which EPA has

set ambient standards, including nitrogen dioxide, ozone, and particulate matter. The paucity of data and other factors precluded monetization of the benefits of this rule. Consequently, the allocative efficiency aspects of this rule cannot be determined.

A few commenters asserted that Executive Order 12291 is not applicable to part 55 according to section 8 of that Order. They noted that section 8 states that Executive Order 12291 shall not apply where its terms would be in conflict with statutory deadlines. EPA notes that the RIA was not a pacing item in rule development. Furthermore, other analyses contained in the RIA are necessary to respond to the requirements of the Paperwork Reduction Act and the Regulatory Flexibility Act.

Another commenter suggested that EPA avoided the most direct measure of assessing equity by not comparing the relative cost effectiveness of onshore regulations to offshore regulations. The criterion used by EPA to assess equity is that required by section 328, namely, that the same requirements applied onshore be applied offshore, within 25 miles of states' seaward boundaries.

Cost effectiveness estimates on the regulations are included in the RIA as they were in the RIA Screening. Estimates included in the RIA are based on application of generic control technologies on existing platforms. The resulting cost effectiveness numbers (dollars per ton of pollution removed) do not establish a precedent as a cost-effectiveness benchmark. In addition, permitting agencies are not bound by EPA's assumptions of the controls that may be required of any specific source.

Various parameters of the RIA Screening have been changed or modified for the RIA as a result of comments received. The following is a brief description of comments and resulting changes to the analysis. A more detailed description is found in the Response to Comments document in EPA Air Docket A-91-76.

New Sources

The following comments, to which the RIA responds, have had the greatest impact on the estimated cost of this rule. These comments are in regard to (1) the time frame of the analysis, (2) the number and type of projected activities assumed, (3) assumptions regarding emission offset ratios, (4) projections of offset prices, and (5) transfer and resale of surplus offsets.

Comments regarding items (1) and (2) correctly noted that due to current moratoria on OCS leasing, the time frame chosen and activity level assumed for the RIA Screening did not typify the rate of OCS development. In response, EPA has used data from MMS which incorporate activity on existing leases, as well as projected activity on future leases. Costs resulting from activity projected to occur during 1993–1997 have been analyzed in the RIA. For activity projected to occur between 1998–2010, costs have been tabulated and explained in Addendum I of the RIA.

The incremental offset ratio is what is at issue in item (3) because it affects an important element of cost attributable to the OCS regulation. The comment noted the emission offset ratio assumed for Santa Barbara, 1.2:1, was incorrect. The rationale was that as a result of the coastal consistency process, new sources locating in the Santa Barbara Channel currently face a 1:1 offset ratio. In response, EPA incorporated an incremental offset ratio of 0.2:1 into the RIA for new sources in the Santa Barbara Channel, but only in the form of a sensitivity analysis. The offset ratio imposed through the coastal consistency process is dependent on the membership of the Coastal Commission, and is therefore subject to change. A 1.2:1 offset ratio is still assumed in the RIA to calculate the incremental costs and benefits of the rule for new sources locating off of ozone nonattainment areas in Southern California, as this is the offset ratio incorporated into Santa Barbara's onshore regulations.

In response to comment (4), EPA has revised its projected offset prices to incorporate additional data and analyses, including two NO_x offset price scenarios. The result is higher projected costs for offsets.

In regard to comment (5), commenters noted that although the transfer and resale of surplus offsets, which was assumed in the RIA Screening, is consistent with EPA policy, such assumptions may not be consistent with the regulations of the onshore area. Another commenter noted that due to the uncertainty of the offsets market, holders of offsets are apt to maintain, and then transfer, offsets between OCS phases of operation. As a result, the RIA retains the assumption that emission offsets are transferred from a successful exploration activity to the later stages of an OCS project; however, the resale of surplus offsets is not assumed. This change in assumption regarding the resale of surplus offsets may overestimate costs.

Existing Platforms

With respect to existing platforms, comments were received on control cost levels, the baseline used for assessing incremental costs, and applicability of technical and safety exemptions.

Regarding control cost levels, commenters stated existing platforms would be subject to $87 million in equipment retrofit and incremental operating costs, or an average of $17.4 million/year, over the five-year time frame analyzed in the RIA Screening. Insufficient data were provided to analyze the methods used to derive these figures. However, it appeared that total investment costs had been accounted for as opposed to incremental investment costs, and that investment costs had not been amortized over the life of the retrofit equipment.

In response to comments on the baseline, incremental control and administrative requirements have been assessed for all existing OCS platforms with onshore agency agreements. For the RIA Screening, these platforms were assumed to be in compliance with many of the requirements onshore as a result of their agreements, and thus, incremental costs were not assessed.

In response to comment, assumptions on the applicability of technical and safety exemptions were revised in the RIA. The RIA Screening assumed that emergency equipment on existing platforms was operated infrequently and that technical and safety exemptions would, as a result, be given. Moreover, residual emissions resulting from these exemptions would have to be offset. Upon further data review and analysis, it was determined that the engines in question are not subject to onshore control technology due to the infrequency of their operation. Hence, the exemptions assumed in the RIA Screening are not required or warranted. As a result, offsets will not be required and costs associated with emergency equipment controls have been deducted from the costs for these platforms originally calculated in the RIA Screening.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." Small entities include small businesses, organizations, and governmental jurisdictions.

As with the proposed regulation, the final regulation does not apply to any small entities. Consequently, a Regulatory Flexibility Analysis is not required. In response to comments which stated that the regulation may have an impact on small businesses in service and supply operations, a

sensitivity analysis has been conducted. This analysis suggests that the rule as currently structured averts direct impacts and mitigates indirect impacts on small entities.

The EPA certifies that the proposed rule will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

As a result of better data, industry compliance testing costs as reflected in the Information Collection Request ("ICR") have increased. One comment stated that the resource burden for states and localities has been underestimated in the ICR relative to EPA's resource burden. It should be noted that EPA's resource burden is higher in part due to the resources needed for initial rule makings and for consistency updates. The burden is also higher due to an increase in projected sources under EPA jurisdiction during the five-year time frame of 1992–1997.

Another comment noted that most of the administrative burden associated with this regulation will be borne by the regulated community as a result of the federal and California Acts which require permitted sources to cover the expense of implementing the regulations under these Acts. To some extent this point is valid. However, there may be a lag between activities conducted by the agencies and the reimbursement via fee collections from the sources. Furthermore, market forces may allow the cost for fees to be reflected in the market prices of products produced by the sources. Hence, it may be the customer and not necessarily the source who bears the ultimate cost for the agencies to administer these regulations. Regardless, the compliance with the ICR requirements of the Paperwork Reduction Act focuses on the initial, not the ultimate, incidence of administrative requirements.

EPA disagrees with the concern that administrative costs associated with the federal operating permit program were not anticipated in the ICR. The Santa Barbara County Air Pollution Control District's regulations were used as a guide in determining administrative costs in Southern California. Santa Barbara's regulations are more stringent than the regulations anticipated as a result of the 40 CFR part 70 permit program. Moreover, for sources outside of California, the best available information regarding the federal operating permit program was employed.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0249.

This collection of information is estimated to have a public reporting burden averaging 413 hours per response. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (PM–223Y); U.S. Environmental Protection Agency; 401 M St., SW.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Part 55

Administrative practice and procedures, Air pollution control, Continental shelf, Ozone, Sulfur oxides, Nitrogen dioxide, Particulate matter, Hydrocarbons, Nitrogen oxides, Intergovernmental relations, Reporting and Recordkeeping requirements, Incorporation by reference, Permits.

Dated: August 21, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preceding preamble, title 40, chapter I of the Code of Federal Regulations is amended by adding a new part 55 as follows.

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

Sec.

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

§ 55.1 Statutory authority and scope.

Section 328(a)(1) of the Clean Air Act ("the Act"), requires the Environmental Protection Agency ("EPA") to establish requirements to control air pollution from outer continental shelf ("OCS") sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. This part establishes the air pollution control requirements for OCS sources and the procedures for implementation and enforcement of the requirements, consistent with these stated objectives of section 328(a)(1) of the Act. In implementing, enforcing and revising this rule and in delegating authority hereunder, the Administrator will ensure that there is a rational relationship to the attainment and maintenance of federal and state ambient air quality standards and the requirements of part C of title I, and that the rule is not used for the purpose of preventing exploration and development of the OCS.

§ 55.2 Definitions.

Administrator means the Administrator of the U.S. Environmental Protection Agency.

Corresponding Onshore Area ("COA") means, with respect to any existing or proposed OCS source located within 25 miles of a state's seaward boundary, the onshore area that is geographically closest to the source or another onshore area that the Administrator designates as the COA, pursuant to § 55.5 of this part.

Delegated agency means any agency that has been delegated authority to implement and enforce requirements of this part by the Administrator, pursuant to § 55.11 of this part. It can refer to a state agency, a local agency, or an Indian tribe, depending on the delegation status of the program.

Existing source or existing OCS source shall have the meaning given in the applicable requirements incorporated into §§ 55.13 and 55.14 of this part, except that for two years following the date of promulgation of this part the definition given in § 55.3 of this part shall apply for the purpose of

determining the required date of compliance with this part.

Exploratory source or exploratory OCS source means any OCS source that is a temporary operation conducted for the sole purpose of gathering information. This includes an operation conducted during the exploratory phase to determine the characteristics of the reservoir and formation and may involve the extraction of oil and gas.

Modification shall have the meaning given in the applicable requirements incorporated into §§ 55.13 and 55.14 of this part, except that for two years following the date of promulgation of this part the definition given in section 111(a) of the Act shall apply for the purpose of determining the required date of compliance with this part, as set forth in § 55.3 of this part.

Nearest Onshore Area ("NOA") means, with respect to any existing or proposed OCS source located within 25 miles of a state's seaward boundary, the onshore area that is geographically closest to that source.

New source or new OCS source shall have the meaning given in the applicable requirements of §§ 55.13 and 55.14 of this part, except that for two years following the date of promulgation of this part, the definition given in § 55.3 of this part shall apply for the purpose of determining the required date of compliance with this part.

OCS source means any equipment, activity, or facility which:

(1) Emits or has the potential to emit any air pollutant;

(2) Is regulated or authorized under the Outer Continental Shelf Lands Act ("OCSLA") (43 U.S.C. § 1331 *et seq.*); and

(3) Is located on the OCS or in or on waters above the OCS.

This definition shall include vessels only when they are:

(1) Permanently or temporarily attached to the seabed and erected thereon and used for the purpose of exploring, developing or producing resources therefrom, within the meaning of section 4(a)(1) of OCSLA (43 U.S.C. § 1331 *et seq.*); or

(2) Physically attached to an OCS facility, in which case only the stationary sources aspects of the vessels will be regulated.

Onshore area means a coastal area designated as an attainment, nonattainment, or unclassifiable area by EPA in accordance with section 107 of the Act. If the boundaries of an area designated pursuant to section 107 of the Act do not coincide with the boundaries of a single onshore air pollution control agency, then onshore area shall mean a coastal area defined by the jurisdictional boundaries of an air pollution control agency.

Outer continental shelf shall have the meaning provided by section 2 of the OCSLA (43 U.S.C. § 1331 *et seq.*).

Potential emissions means the maximum emissions of a pollutant from an OCS source operating at its design capacity. Any physical or operational limitation on the capacity of a source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as a limit on the design capacity of the source if the limitation is federally enforceable. Pursuant to section 328 of the Act, emissions from vessels servicing or associated with an OCS source shall be considered direct emissions from such a source while at the source, and while enroute to or from the source when within 25 miles of the source, and shall be included in the "potential to emit" for an OCS source. This definition does not alter or affect the use of this term for any other purposes under §§ 55.13 or 55.14 of this part, except that vessel emissions must be included in the "potential to emit" as used in §§ 55.13 and 55.14 of this part.

Residual emissions means the difference in emissions from an OCS source if it applies the control requirements(s) imposed pursuant to § 55.13 or § 55.14 of this part and emissions from that source if it applies a substitute control requirement pursuant to an exemption granted under § 55.7 of this part.

State means the state air pollution control agency that would be the permitting authority, a local air pollution permitting agency, or certain Indian tribes which can be the permitting authority for areas within their jurisdiction. State may also be used in the geographic sense to refer to a state, the NOA, or the COA.

§ 55.3 Applicability.

(a) This part applies to all OCS sources except those located in the Gulf of Mexico west of 87.5 degrees longitude.

(b) OCS sources located within 25 miles of states' seaward boundaries shall be subject to all the requirements of this part, which include, but are not limited to, the federal requirements as set forth in §55.13 of this part and the federal, state, and local requirements of the COA (designated pursuant to § 55.5 of this part), as set forth in § 55.14 of this part.

(c) OCS sources located beyond 25 miles of states' seaward boundaries shall be subject to all the requirements of this part, except the requirements of §§ 55.4, 55.5, 55.11, 55.12, and 55.14 of this part.

(d) New OCS sources shall comply with the requirements of this part by September 4, 1992 where a "new OCS source" means an OCS source that is a new source within the meaning of section 111(a) of the Act.

(e) Existing sources shall comply with the requirements of this part by September 4, 1994, where an "existing OCS source" means any source that is not a new source within the meaning of section 111(a) of the Act.

§ 55.4 Requirements to submit a notice of intent.

(a) Prior to performing any physical change or change in method of operation that results in an increase in emissions, and not more than 18 months prior to submitting an application for a preconstruction permit, the applicant shall submit a Notice of Intent ("NOI") to the Administrator through the EPA Regional Office, and at the same time shall submit copies of the NOI to the air pollution control agencies of the NOA and onshore areas adjacent to the NOA. This section applies only to sources located within 25 miles of states' seaward boundaries.

(b) The NOI shall include the following:

(1) General company information, including company name and address, owner's name and agent, and facility site contact.

(2) Facility description in terms of the proposed process and products, including identification by Standard Industrial Classification Code.

(3) Estimate of the proposed project's potential emissions of any air pollutant, expressed in total tons per year and in such other terms as may be necessary to determine the applicability of requirements of this part. Potential emissions for the project must include all vessel emissions associated with the proposed project in accordance with the definition of potential emissions in § 55.2 of this part.

(4) Description of all emissions points including associated vessels.

(5) Estimate of quantity and type of fuels and raw materials to be used.

(6) Description of proposed air pollution control equipment.

(7) Proposed limitations on source operations or any work practice standards affecting emissions.

(8) Other information affecting emissions, including, where applicable, information related to stack parameters (including height, diameter, and plume

temperature), flow rates, and equipment and facility dimensions.

(9) Such other information as may be necessary to determine the applicability of onshore requirements.

(10) Such other information as may be necessary to determine the source's impact in onshore areas.

(c) Exploratory sources and modifications to existing sources with designated COAs shall be exempt from the requirement in paragraph (b)(10) of this section.

(d) The scope and contents of the NOI shall in no way limit the scope and contents of the required permit application or applicable requirements given in this part.

§ 55.5 Corresponding onshore area designation.

(a) *Proposed exploratory sources.* The NOA shall be the COA for exploratory sources located within 25 miles of states' seaward boundaries. Paragraphs (b), (c), and (f) of this section are not applicable to these sources.

(b) *Requests for designation.*

(1) The chief executive officer of the air pollution control agency of an area that believes it has more stringent air pollution control requirements than the NOA for a proposed OCS source, may submit a request to be designated as the COA to the Administrator and at the same time shall send copies of the request to the chief executive officer of the NOA and to the proposed source. The request must be received by the Administrator within 60 days of the receipt of the NOI. If no requests are received by the Administrator within 60 days of the receipt of the NOI, the NOA will become the designated COA without further action.

(2) No later than 90 days after the receipt of the NOI, a demonstration must be received by the Administrator showing that:

(i) The area has more stringent requirements with respect to the control and abatement of air pollution than the NOA;

(ii) The emissions from the source are or would be transported to the requesting area; and

(iii) The transported emissions would affect the requesting area's efforts to attain or maintain a federal or state ambient air quality standard or to comply with the requirements of part C of title I of the Act, taking into account the effect of air pollution control requirements that would be imposed if the NOA were designated as the COA.

(c) *Determination by the Administrator*

(1) If no demonstrations are received by the Administrator within 90 days of the receipt of the NOI, the NOA will become the designated COA without further action.

(2) If one or more demonstrations are received, the Administrator will issue a preliminary designation of the COA within 150 days of the receipt of the NOI, which shall be followed by a 30 day public comment period, in accordance with paragraph (f) of this section.

(3) The Administrator will designate the COA for a specific source within 240 days of the receipt of the NOI.

(4) When the Administrator designates a more stringent area as the COA with respect to a specific OCS source, the delegated agency in the COA will exercise all delegated authority. If there is no delegated agency in the COA, then EPA will issue the permit and implement and enforce the requirements of this part. The Administrator may retain authority for implementing and enforcing the requirements of this part if the NOA and the COA are in different states.

(5) The Administrator shall designate the COA for each source only once in the source's lifetime.

(d) *Offset requirements.* Offsets shall be obtained based on the requirements imposed in the COA, and in accordance with the following provisions:

(1) The offset ratio applied shall not be higher than the highest offset ratio required onshore provided that a net air quality benefit is achieved.

(2) To determine whether an offset is on the landward or seaward side of a proposed source or modification, a straight line shall be drawn through the proposed source or modification parallel to the coastline. Offsets obtained on the seaward side of the line will be considered seaward of the source, and offsets obtained on the landward side will be considered landward.

(3) Offsets obtained between the site of the proposed source or modification and the state seaward boundary shall be obtained at the base ratio for the COA. No discounting or penalties associated with distance between the proposed source and the source of emissions reductions shall apply.

(4) Offsets obtained on the landward side of the state seaward boundary will be subject to onshore discounting and penalties associated with distance as required in the COA to be applied in the following manner. A straight line shall be drawn from the site of the proposed source or modification to the source of the offsets. The point at which this line crosses the state seaward boundary shall be treated as the site of the proposed source or modification for the purpose of determining the amount of offsets required.

(5) Offsets obtained on the seaward side of the proposed source or modification will be subject to all the requirements of the COA, including any discounting and distance penalties.

(6) Offsets may be obtained in the COA, the NOA, and from OCS sources with the same COA or NOA as the proposed source or modification. All other offset requirements of the COA and paragraph (d) of this section shall apply, including distance penalties applied in accordance with the requirements of this subsection.

(7) Offsets may be obtained outside the NOA or the COA in accordance with the requirements of the COA and this subsection.

(e) *Authority to designate the COA.* The authority to designate the COA for any OCS source shall not be delegated to a state or local agency, but shall be retained by the Administrator.

(f) *Administrative procedures and public participation.* The Administrator will use the following public notice and comment procedures for processing a request for COA designation under this section:

(1) Within 150 days from receipt of an NOI, if one or more demonstrations are received, the Administrator shall make a preliminary determination of the COA and shall:

(i) Make available, in at least one location in the NOA and in the area requesting COA designation, a copy of all materials submitted by the requester, a copy of the Administrator's preliminary determination, and a copy or summary of other materials, if any, considered by the Administrator in making the preliminary determination; and

(ii) Notify the public, by prominent advertisement in a newspaper of general circulation in the NOA and the area requesting COA designation, of a 30-day opportunity for written public comment on the available information and the Administrator's preliminary COA designation.

(2) A copy of the notice required pursuant to paragraph (f)(1)(ii) of this section shall be sent to the requester, the affected source, each person from whom a written request of such notice has been received, and the following officials and agencies having jurisdiction over the COA and NOA: state and local air pollution control agencies, the chief executive of the city and county, the Federal Land Manager of potentially affected Class I areas, and any Indian governing body whose lands

may be affected by emissions from the OCS source.

(3) Public comments received in writing within 30 days after the date the public notice is made available will be considered by the Administrator in making the final decision on the request. All comments will be made available for public inspection.

(4) The Administrator will make a final COA designation within 60 days after the close of the public comment period. The Administrator will notify, in writing, the requester and each person who has requested notice of the final action and will set forth the reasons for the determination. Such notification will be made available for public inspection.

§ 55.6 Permit requirements.

(a) *General provisions.*

(1) *Permit applications.* (i) The owner or operator of an OCS source shall submit to the Administrator or delegated agency all information necessary to perform any analysis or make any determination required under this section.

(ii) Any application submitted pursuant to this part by an OCS source shall include a description of all the requirements of this part and a description of how the source will comply with the applicable requirements. For identification purposes only, the application shall include a description of those requirements that have been proposed by EPA for incorporation into this part and that the applicant believes, after diligent research and inquiry, apply to the source.

(2) *Exemptions.* (i) When an applicant submits any approval to construct or permit to operate application to the Administrator or delegated agency it shall include a request for exemption from compliance with any pollution control technology requirement that the applicant believes is technically infeasible or will cause an unreasonable threat to health and safety. The Administrator or delegated agency shall act on the request for exemption in accordance with the procedures established in § 55.7 of this part.

(ii) A final permit shall not be issued under this part until a final determination is made on any exemption request, including those appealed to the Administrator in accordance with § 55.7 of this part.

(3) *Administrative procedures and public participation.* The Administrator will follow the applicable procedures of 40 CFR part 124 in processing applications under this part. Until 40 CFR part 124 has been modified to specifically reference permits issued under this part, the Administrator will follow the procedures in part 124 used to issue Prevention of Significant Deterioration ("PSD") permits.

(4) *Source obligation.* (i) Any owner or operator who constructs or operates an OCS source not in accordance with the application submitted pursuant to this part 55, or with any approval to construct or permit to operate, or any owner or operator of a source subject to the requirements of this part who commences construction after the effective date of this part without applying for and receiving approval under this part, shall be in violation of this part.

(ii) Any owner or operator of a new OCS source who commenced construction prior to the promulgation date of this rule shall comply with the requirements of paragraph (e) of this section.

(iii) Receipt of an approval to construct or a permit to operate from the Administrator or delegated agency shall not relieve any owner or operator of the responsibility to comply fully with the applicable provisions of any other requirements under federal law.

(iv) The owner or operator of an OCS source to whom the approval to construct or permit to operate is issued under this part shall notify all other owners and operators, contractors, and the subsequent owners and operators associated with emissions from the source, of the conditions of the permit issued under this part.

(5) *Delegation of authority.* If the Administrator delegates any of the authority to implement and enforce the requirements of this section, the following provisions shall apply:

(i) The applicant shall send a copy of any permit application required by this section to the Administrator through the EPA Regional Office at the same time as the application is submitted to the delegated agency.

(ii) The delegated agency shall send a copy of any public comment notice required under this section or §§ 55.13 or 55.14 to the Administrator through the EPA Regional Office.

(iii) The delegated agency shall send a copy of any preliminary determination and final permit action required under this section or §§ 55.13 or 55.14 to the Administrator through the EPA Regional Office at the time of the determination and shall make available to the Administrator any materials used in making the determination.

(b) *Preconstruction requirements for OCS sources located within 25 miles of states' seaward boundaries.*

(1) No OCS source to which the requirements of §§ 55.13 or 55.14 of this part apply shall begin actual construction after the effective date of this part without a permit that requires the OCS source to meet those requirements.

(2) Any permit application required under this part shall not be submitted until the Administrator has determined whether a consistency update is necessary, pursuant to § 55.12 of this part, and, if the Administrator finds an update to be necessary, has published a proposed consistency update.

(3) The applicant may be required to obtain more than one preconstruction permit, if necessitated by partial delegation of this part or by the requirements of this section and §§ 55.13 and 55.14 of this part.

(4) An approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The 18-month period may be extended upon a showing satisfactory to the Administrator or the delegated agency that an extension is justified. Sources obtaining extensions are subject to all new or interim requirements and a reassessment of the applicable control technology when the extension is granted. This requirement shall not supersede a more stringent requirement under §§ 55.13 or 55.14 of this part.

(5) Any preconstruction permit issued to a new OCS source or modification shall remain in effect until it expires under paragraph (b)(4) of this section or is rescinded under the applicable requirements incorporated in §§ 55.13 and 55.14 of this part.

(6) Whenever any proposed OCS source or modification to an existing OCS source is subject to action by a federal agency that might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321), review by the Administrator conducted pursuant to this section shall be coordinated with the environmental reviews under that Act to the extent feasible and reasonable.

(7) The Administrator or delegated agency and the applicant shall provide written notice of any permit application from a source, the emissions from which may affect a Class I area, to the Federal Land Manager charged with direct responsibility for management of any lands within the Class I area. Such notification shall include a copy of all information contained in the permit application and shall be given within 30 days of receipt of the application and at

least 60 days prior to any public hearing on the preconstruction permit.

(8) *Modification of existing sources.* The preconstruction requirements above shall not apply to a particular modification, as defined in §§ 55.13 or 55.14 of this part, of an existing OCS source if:

(i) The modification is necessary to comply with this part, and no other physical change or change in the method of operation is made in conjunction with the modification;

(ii) The modification is made within 24 months of promulgation of this part; and

(iii) The modification does not result in an increase, in excess of any *de minimus* levels contained in the applicable requirements of §§ 55.13 and 55.14, of potential emissions or actual hourly emissions of a pollutant regulated under the Act.

(9) *Compliance plans.* Sources intending to perform modifications that meet all of the criteria of paragraph (b)(8) of this section shall submit a compliance plan to the Administrator or delegated agency prior to performing the modification. The compliance shall describe the schedule and method the source will use to comply with the applicable OCS requirements within 24 months of the promulgation date of this part and shall include a request for any exemptions from compliance with a pollution control technology requirement that the applicant believes is technically infeasible or will cause an unreasonable threat to health and safety. The Administrator or delegated agency shall act on the request for exemption in accordance with the procedures established in § 55.7 of this part.

(i) The Administrator or delegated agency shall review the compliance plan and provide written comments to the source within 45 days of receipt of such plan. The source shall provide a written response to such comments as required by the reviewing agency.

(ii) Receipt and review of a compliance plan by the Administrator or delegated agency shall not relieve any owner or operator of an existing OCS source of the responsibility to comply fully with the applicable requirements of §§ 55.13 and 55.14 of this part within 24 months of promulgation of this part.

(c) *Operating permit requirements for sources located within 25 miles of states' seaward boundaries.*

(1) All applicable operating permit requirements listed in this section and incorporated into §§ 55.13 and 55.14 of this part shall apply to OCS sources.

(2) The Administrator or delegated agency shall not issue a permit to operate to any existing OCS source that has not demonstrated compliance with all the applicable requirements of this part.

(3) [Reserved].

(d) *Permit requirements for sources located beyond 25 miles of states' seaward boundaries.*

(1) OCS sources located beyond 25 miles of states' seaward boundaries shall be subject to the permitting requirements set forth in this section and § 55.13 of this part.

(2) The Administrator shall retain authority to implement and enforce all requirements of this part for OCS sources located beyond 25 miles from states' seaward boundaries.

(e) *Permit requirements for new sources that commenced construction prior to September 4, 1992.*

(1) *Applicability.* § 55.6(e) applies to a new OCS source, as defined by section 328 of the Act, that commenced construction before September 4, 1992.

(2) A source subject to § 55.6(e) shall comply with the following requirements:

(i) By October 5, 1992, the owner or operator of the source shall submit a transitional permit application ("TPA") to the Administrator or the delegated agency. The TPA shall include the following:

(A) The information specified in §§ 55.4(b)(1) through § 55.4(b)(9) of this part;

(B) A list of all requirements applicable to the source under this part;

(C) A request for exemption from compliance with any control technology requirement that the applicant believes is technically infeasible or will cause an unreasonable threat to health and safety;

(D) An air quality screening analysis demonstrating whether the source has or is expected in the future to cause or contribute to a violation of any applicable state or federal ambient air quality standard or exceed any applicable increment. If no air quality analysis is required by the applicable requirements of §§ 55.13 and 55.14, this requirement does not apply;

(E) Documentation that source emissions are currently being offset, or will be offset if the source has not commenced operation, at the ratio required under this part, and documentation that those offsets meet or will meet the requirements of this part; and

(F) A description of how the source is complying with the applicable requirements of §§ 55.13 and 55.14 of this part, including emission levels and corresponding control measures, including Best Available Control Technology ("BACT") or Lowest Achievable Emission Rates ("LAER"), but excluding the requirements to have valid permits.

(ii) The source shall expeditiously complete its permit application in compliance with the schedule determined by the Administrator or delegated agency.

(iii) The source shall comply with all applicable requirements of this part except for the requirements of paragraph (a)(4)(i) of this section. The source shall comply with the control technology requirements (such as BACT or LAER) set forth in the TPA that would be applicable if the source had a valid permit.

(iv) Any owner or operator subject to this subsection who continues to construct or operate an OCS source thirty days from promulgation of this part without submitting a TPA, or continues to construct or operate an OCS source not in accordance with the TPA submitted pursuant to paragraph (e) of this section, or constructs or operates an OCS source not in accordance with the schedule determined by the permitting authority, shall be in violation of this part.

(3) Upon the submittal of a permit application deemed to be complete by the permitting authority, the owner or operator of the source shall be subject to the permitting requirements of §§ 55.13 and 55.14 of this part that apply subsequent to the submission of a complete permit application. When a source receives the permit or permits required under this part, its TPA shall expire.

(4) Until the date that a source subject to this subsection receives the permit or permits required under this part, that source shall cease operation if, based on projected or actual emissions, the permitting authority determines that the source is currently or may in the future cause or contribute to a violation of a state or federal ambient air quality standard or exceed any applicable increment.

§ 55.7 Exemptions.

(a) *Authority and criteria.* The Administrator or the delegated agency may exempt a source from a control technology requirement of this part if the Administrator or the delegated agency finds that compliance with the control technology requirement is technically infeasible or will cause an unreasonable threat to health and safety.

(b) *Request for an exemption.* (1) *Permit application required.* An applicant shall submit a request for an exemption from a control technology requirement at the same time as the

applicant submits a preconstruction or operating permit application to the Administrator or delegated agency.

(2) *No permit application required.* If no permit or permit modification is required, a request for an exemption must be received by the Administrator or delegated agency within 60 days from the date the control technology requirement is promulgated by EPA.

(3) *Compliance plan.* An existing source that submits a compliance plan in accordance with § 55.6(b) of this part shall submit all requests for exemptions at the same time as the compliance plan. For the purpose of applying § 55.7 of this part, a request submitted with a compliance plan shall be treated in the same manner as a request that does not require a permit application.

(4) *Content of request.* (i) The request shall include information that demonstrates that compliance with a control technology requirement of this part would be technically infeasible or would cause an unreasonable threat to health and safety.

(ii) The request shall include a proposed substitute requirement(s) as close in stringency to the original requirement as possible.

(iii) The request shall include an estimate of emission reductions that would be achieved by compliance with the original requirement, an estimate of emission reductions that would be achieved by compliance with the proposed substitute requirement(s) and an estimate of residual emissions.

(iv) The request shall identify emission reductions of a sufficient quantity to offset the estimated residual emissions. Sources located beyond 25 miles from states' seaward boundaries shall consult with the Administrator to identify suitable emission reductions.

(c) *Consultation requirement.* If the authority to grant or deny exemptions has been delegated, the delegated agency shall consult with the Minerals Management Service of the U.S. Department of Interior and the U.S. Coast Guard to determine whether the exemption will be granted or denied.

(1) The delegated agency shall transmit to the Administrator (through the Regional Office), the Minerals Management Service, and the U.S. Coast Guard, a copy of the permit application, or the request if no permit is required, within 5 days of its receipt.

(2) *Consensus.* If the delegated agency, the Minerals Management Service, and the U.S. Coast Guard reach a consensus decision on the request within 90 days from the date the delegated agency received the request, the delegated agency may issue a preliminary determination in accordance with the applicable requirements of paragraph (f) of this section.

(3) *No consensus.* If the delegated agency, the Minerals Management Service, and the U.S. Coast Guard do not reach a consensus decision within 90 days from the date the delegated agency received the request, the request shall automatically be referred to the Administrator who will process the referral in accordance with paragraph (f)(3) of this section. The delegated agency shall transmit to the Administrator, within 91 days of its receipt, the request and all materials submitted with the request, such as the permit application or the compliance plan, and any other information considered or developed during the consultation process.

(4) If a request is referred to the Administrator and the delegated agency issues a preliminary determination on a permit application before the Administrator issues a final decision on the exemption, the delegated agency shall include a notice of the opportunity to comment on the Administrator's preliminary determination in accordance with the procedures of paragraph (f)(4) of this section.

(5) The Administrator's final decision on a request that has been referred pursuant to paragraph (c) of this section shall be incorporated into the final permit issued by the delegated agency. If no permit is required, the Administrator's final decision on the request shall be implemented and enforced by the delegated agency.

(d) *Preliminary determination.* The Administrator or delegated agency shall issue a preliminary determination in accordance with paragraph (f) of this section. A preliminary determination shall propose to grant or deny the request for exemption. A preliminary determination to grant the request shall include proposed substitute control requirements and offsets necessary to comply with the requirements of paragraph (e) of this section.

(e) *Grant of exemption.*

(1) The source shall comply with a substitute requirement(s), equal to or as close in stringency to the original requirement as possible, as determined by the Administrator or delegated agency.

(2) An OCS source located within 25 miles of states' seaward boundaries shall offset residual emissions resulting from the grant of an exemption request in accordance with the requirements of the Act and the regulations thereunder. The source shall obtain offsets in accordance with the applicable requirements as follows:

(i) If offsets are required in the COA, a new source shall offset residual emissions in the same manner as all other new source emissions in accordance with the requirements of § 55.5(d) of this part.

(ii) If offsets are not required in the COA, a new source shall comply with an offset ratio of 1:1.

(iii) An existing OCS source shall comply with an offset at a ratio of 1:1.

(3) An OCS source located beyond 25 miles from states' seaward boundaries shall obtain emission reductions at a ratio determined by the Administrator to be adequate to protect state and federal ambient air quality standards and to comply with part C of title I of the Act.

(f) *Administrative procedures and public participation.*

(1) *Request submitted with a permit application.* If a request is submitted with a permit application, the request shall be considered part of the permit application and shall be processed accordingly for the purpose of administrative procedures and public notice and comment requirements. The Administrator shall comply with the requirements of 40 CFR part 124 and the requirements set forth at § 55.6 of this part. If the Administrator has delegated authority to a state, the delegated agency shall use its own procedures as deemed adequate by the Administrator in accordance with § 55.11 of this part. These procedures must provide for public notice and comment on the preliminary determination.

(2) *Request submitted without a permit or with a compliance plan.* If a permit is not required, the Administrator or the delegated agency shall issue a preliminary determination within 90 days from the date the request was received, and shall use the procedures set forth at paragraph (f)(4) of this section for processing a request.

(3) *Referral.* If a request is referred to the Administrator pursuant to paragraph (c) of this section, the Administrator shall make a preliminary determination no later than 30 days after receipt of the request and any accompanying materials transmitted by the delegated agency. The Administrator shall use the procedures set forth at paragraph (f)(4) of this section for processing a request.

(4) The Administrator or the delegated agency shall comply with the following requirements for processing requests submitted without a permit, with a compliance plan, and requests referred to the Administrator:

(i) Issue a preliminary determination to grant or deny the request. A preliminary determination by the Administrator to deny a request shall be

considered a final decision and will be accompanied by the reasons for the decision. As such, it is not subject to any further public notice, comment, or hearings. Written notice of the denial shall be given to the requester.

(ii) Make available, in at least one location in the COA and NOA, a copy of all materials submitted by the requester, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(iii) Notify the public, by prominent advertisement in a newspaper of general circulation in the COA and NOA, of a 30-day opportunity for written public comment on the information submitted by the owner or operator and on the preliminary determination.

(iv) Send a copy of the notice required pursuant to paragraph (f)(4)(iii) of this section to the requester, the affected source, each person from whom a written request of such notice has been received, and the following officials and agencies having jurisdiction over the COA and NOA: state and local air pollution control agencies, the chief executive of the city and county, the Federal Land Manager of potentially affected Class I areas, and any Indian governing body whose lands may be affected by emissions from the OCS source.

(v) Consider written public comments received within 30 days after the date the public notice is made available when making the final decision on the request. All comments will be made available for public inspection. At the time that any final decision is issued, the Administrator or delegated agency will issue a response to comments.

(vi) Make a final decision on the request within 30 days after the close of the public comment period. The Administrator or the delegated agency will notify, in writing, the applicant and each person who has submitted written comments, or from whom a written request of such notice has been received, of the final decision and will set forth the reasons. Such notification will be made available for public inspection.

(5) Within 30 days after the final decision has been made on a request, the requester, or any person who filed comments on the preliminary determination, may petition the Administrator to review any aspect of the decision. Any person who failed to file comments on the preliminary decision may petition for administrative review only on the changes from the preliminary to the final determination.

§ 55.8 Monitoring, reporting, inspections, and compliance.

(a) The Administrator may require monitoring or reporting and may authorize inspections pursuant to section 114 of the Act and the regulations thereunder. Sources shall also be subject to the requirements set forth in §§ 55.13 and 55.14 of this part.

(b) All monitoring, reporting, inspection and compliance requirements authorized under the Act shall apply.

(c) An existing OCS source that is not required to obtain a permit to operate within 24 months of the date of promulgation of this part shall submit a compliance report to the Administrator or delegated agency within 25 months of promulgation of this part. The compliance report shall specify all the applicable OCS requirements of this part and a description of how the source has complied with these requirements.

(d) The Administrator or the delegated agency shall consult with the Minerals Management Service and the U.S. Coast Guard prior to inspections. This shall in no way interfere with the ability of EPA or the delegated agency to conduct unannounced inspections.

§ 55.9 Enforcement.

(a) OCS sources shall comply with all requirements of this part and all permits issued pursuant to this part. Failure to do so shall be considered a violation of section 111(e) of the Act.

(b) All enforcement provisions of the Act, including, but not limited to, the provisions of sections 113, 114, 120, 303 and 304 of the Act, shall apply to OCS sources.

(c) If a facility is ordered to cease operation of any piece of equipment due to enforcement action taken by EPA or a delegated agency pursuant to this part, the shutdown will be coordinated by the enforcing agency with the Minerals Management Service and the U.S. Coast Guard to assure that the shutdown will proceed in a safe manner. No shutdown action will occur until after consultation with these agencies, but in no case will initiation of the shutdown be delayed by more than 24 hours.

§ 55.10 Fees.

(a) *OCS sources located within 25 miles of states' seaward boundaries.*

(1) EPA will collect operating fees from OCS sources calculated in accordance with the fee requirements imposed in the COA if the fees are based on regulatory objectives, such as discouraging emissions. If the fee requirements are based on cost recovery objectives, however, EPA will adjust the fees to reflect the costs to EPA to issue permits and administer the permit program.

(2) EPA will collect all other fees from OCS sources calculated in accordance with the fee requirements imposed in the COA if the fees are based on regulatory objectives, such as discouraging emissions. If the fee requirements are based on cost recovery objectives, however, EPA will adjust the fees to reflect the costs to EPA to issue permits and administer the permit program.

(3) Upon delegation, the delegated agency will collect fees from OCS sources calculated in accordance with the fee requirements imposed in the COA. Upon delegation of authority to implement and enforce any portion of this part, EPA will cease to collect fees imposed in conjunction with that portion.

(b) [Reserved].

§ 55.11 Delegation.

(a) The governor or the governor's designee of any state adjacent to an OCS source subject to the requirements of this part may submit a request to the Administrator for authority to implement and enforce the requirements of this OCS program within 25 miles of the state seaward boundary, pursuant to section 328(a)(3) of the Act. Authority to implement and enforce §§ 55.5, 55.11, and 55.12 of this part will not be delegated.

(b) The Administrator will delegate implementation and enforcement authority to a state if the state has an adjacent OCS source and the Administrator determines that the state's regulations are adequate, including a demonstration by the state that the state has:

(1) Adopted the appropriate portions of this part into state law;

(2) Adequate authority under state law to implement and enforce the requirements of this part. A letter from the State Attorney General shall be required stating that the requesting agency has such authority;

(3) Adequate resources to implement and enforce the requirements of this part; and

(4) Adequate administrative procedures to implement and enforce the requirements of this part, including public notice and comment procedures.

(c) The Administrator will notify in writing the governor or the governor's designee of the Administrator's final action on a request for delegation within 6 months of the receipt of the request.

(d) If the Administrator finds that the state regulations are adequate, the Administrator will authorize the state to implement and enforce the OCS

requirements under state law. If the Administrator finds that only part of the state regulations are adequate, he will authorize the state to implement and enforce only that portion of this part.

(e) Upon delegation, a state may use any authority it possesses under state law to enforce any permit condition or any other requirement of this part for which the agency has delegated authority under this part. A state may use any authority it possesses under state law to require monitoring and reporting and to conduct inspections.

(f) Nothing in this part shall prohibit the Administrator from enforcing any requirement of this part.

(g) The Administrator will withdraw a delegation of any authority to implement and enforce any or all of this part if the Administrator determines that: (1) The requirements of this part are not being adequately implemented or enforced by the delegated agency, or (2) The delegated agency no longer has adequate regulations as required by § 55.11(b) of this part.

(h) *Sharing of information.* Any information obtained or used in the administration of a delegated program shall be made available to EPA upon request without restriction. If the information has been submitted to the delegated agency under a claim of confidentiality, the delegated agency must notify the source of this obligation and submit that claim to EPA. Any information obtained from a delegated agency accompanied by a claim of confidentiality will be treated in accordance with the requirements of 40 CFR Part 2.

(i) *Grant of exemptions.* A decision by a delegated agency to grant or deny an exemption request may be appealed to the Administrator in accordance with § 55.7 of this part.

§ 55.12 Consistency updates.

(a) The Administrator will update this part as necessary to maintain consistency with the regulations of onshore areas in order to attain and maintain federal and state ambient standards and comply with part C of title I of the Act.

(b) Where an OCS activity is occurring within 25 miles of a state seaward boundary, consistency reviews will occur at least annually. In addition, in accordance with paragraphs (c) and (d) of this section, consistency reviews will occur upon receipt of an NOI and when a state or local agency submits a rule to EPA to be considered for incorporation by reference in this part 55.

(1) Upon initiation of a consistency review, the Administrator will evaluate the requirements of part 55 to determine whether they are consistent with the current onshore requirements.

(2) If the Administrator finds that part 55 is inconsistent with the requirements in effect in the onshore area, EPA will conduct a notice and comment rulemaking to update part 55 accordingly.

(c) *Consistency reviews triggered by receipt of an NOI.* Upon receipt of an NOI, the Administrator will initiate a consistency review of regulations in the onshore area.

(1) If the NOI is submitted by a source for which the COA has previously been assigned, EPA will publish a proposed consistency update in the **Federal Register** no later than 60 days after the receipt of the NOI, if an update is deemed necessary by the Administrator:

(2) If the NOI is submitted by a source requiring a COA designation, EPA will publish a proposed consistency update in the **Federal Register**, if an update is deemed necessary by the Administrator:

(i) No later than 75 days after receipt of the NOI if no adjacent areas submit a request for COA designation and the NOA becomes the COA by default, or

(ii) No later than 105 days after receipt of the NOI if an adjacent area submits a request to be designated as COA but fails to submit the required demonstration within 90 days of receipt of the NOI, or

(iii) No later than 15 days after the date of the final COA determination if one or more demonstrations are received.

(d) *Consistency reviews triggered by state and local air pollution control agencies submitting rules directly to EPA for inclusion into Part 55.*

(1) EPA will propose in the **Federal Register** to approve applicable rules submitted by state or local regulatory agencies for incorporation by reference into § 55.14 of this part by the end of the calendar quarter following the quarter in which the submittal is received by EPA.

(2) State and local rules submitted for inclusion in part 55 must be rationally related to the attainment and maintenance of federal or state ambient air quality standards or to the requirements of part C of title I of the Act. The submittal must be legible and unmarked, with the adoption date and the name of the agency on each page, and must be accompanied by proof of adoption.

(e) No rule or regulation that EPA finds to be arbitrary or capricious will be incorporated into this part.

(f) A source may not submit a complete permit application until any update the Administrator deems necessary to make part 55 consistent with the COA's rules has been proposed.

§ 55.13 Federal requirements that apply to OCS sources.

(a) The requirements of this section shall apply to OCS sources as set forth below. In the event that a requirement of this section conflicts with an applicable requirement of § 55.14 of this part and a source cannot comply with the requirements of both sections, the more stringent requirement shall apply.

(b) In applying the requirements incorporated into this section:

(1) "New Source" means new OCS source; and

(2) "Existing Source" means existing OCS source; and

(3) "Modification" means a modification to an OCS source.

(4) For requirements adopted prior to promulgation of this part, language in such requirements limiting the applicability of the requirements to onshore sources or to sources within state boundaries shall not apply.

(c) 40 CFR Part 60 (NSPS) shall apply to OCS sources in the same manner as in the COA, except that any source determined to be an existing source pursuant to § 55.3(e) of this part shall not be considered a "new source" for the purpose of NSPS adopted before December 5, 1991.

(d) 40 CFR 52.21 (PSD) shall apply to OCS sources:

(1) Located within 25 miles of a state's seaward boundary if the requirements of 40 CFR 52.21 are in effect in the COA;

(2) Located beyond 25 miles of states' seaward boundaries.

(e) 40 CFR Part 61, together with any other provisions promulgated pursuant to section 112 of the Act, shall apply if rationally related to the attainment and maintenance of federal or state ambient air quality standards or the requirements of part C of title I of the Act.

(f) (Reserved).

(g) The provisions of 40 CFR 52.10, 40 CFR 52.24, and 40 CFR Part 51 and accompanying Appendix S shall apply to OCS sources located within 25 miles of states' seaward boundaries, if these requirements are in effect in the COA.

(h) If the Administrator determines that additional requirements are necessary to protect federal and state ambient air quality standards or to comply with part C of title I, such requirements will be incorporated in this part.

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries, by state.

(a) The requirements of this section shall apply to OCS sources as set forth below. In the event that a requirement of this section conflicts with an applicable requirement of § 55.13 of this part and a source cannot comply with the requirements of both sections, the more stringent requirement shall apply.

(b) In applying the requirements incorporated into this section:

(1) "New Source" means new OCS source; and

(2) "Existing Source" means existing OCS source; and

(3) "Modification" means a modification to an existing OCS source.

(4) For requirements adopted prior to promulgation of this part, language in such requirements limiting the applicability of the requirements to onshore sources or to sources within state boundaries shall not apply.

(c) During periods of EPA implementation and enforcement of this section, the following shall apply:

(1) Any reference to a state or local air pollution control agency or air pollution control officer shall mean EPA or the Administrator, respectively.

(2) Any submittal to state or local air pollution control agency shall instead be submitted to the Administrator through the EPA Regional Office.

(3) Nothing in this section shall alter or limit EPA's authority to administer or enforce the requirements of this part under federal law.

(4) EPA shall not be bound by any state or local administrative or procedural requirements including, but not limited to, requirements pertaining to hearing boards, permit issuance, public notice procedures, and public hearings. EPA will follow the applicable procedures set forth elsewhere in this part, in 40 CFR Part 124, and in federal rules promulgated pursuant to title V of the Act (as such rules apply in the COA), when administering this section.

(5) Only those requirements of 40 CFR Part 52 that are rationally related to the attainment and maintenance of federal or state ambient air quality standards or part C of title I shall apply to OCS sources.

(d) *Implementation Plan Requirements.*

(1) (Reserved).

(2) Alaska.

(i) 40 CFR part 52, subpart C.

(ii) (Reserved).

(3) California.

(i) 40 CFR part 52, subpart F.

(ii) (Reserved).

(4) and (5) (Reserved).

(6) Florida.

(i) 40 CFR part 52, subpart K.

(ii) (Reserved).

(7) through (16) (Reserved).

(17) North Carolina.

(i) 40 CFR part 52, subpart II.

(ii) (Reserved).

(18) through (23) (Reserved).

(e) *State and local requirements.* State and local requirements promulgated by EPA as applicable to OCS sources located within 25 miles of states' seaward boundaries have been compiled into separate documents organized by state and local areas of jurisdiction. These documents, set forth below, are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register Office in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Copies of rules pertaining to particular states or local areas may be inspected or obtained from the EPA Air Docket (A–91–76), U.S. EPA, room M–1500, 401 M Street, SW., Washington, DC, 20460 or the appropriate EPA regional offices: U.S. EPA, Region 4 (Florida and North Carolina), 345 Courtland Street, NE., Atlanta, GA 30365; U.S. EPA, Region 9 (California), 75 Hawthorne Street, San Francisco, CA 94105; and U.S. EPA, Region 10 (Alaska), 1200 Sixth Avenue, Seattle, WA 98101. For an informational listing of the state and local requirements incorporated into this part, which are applicable to sources of air pollution located on the OCS, see Appendix A to this part.

(1) (Reserved).

(2) Alaska.

(i) State requirements.

(A) *State of Alaska Requirements Applicable to OCS Sources,* August 21, 1992.

(B) (Reserved).

(ii) Local requirements.

(A) *South Central Alaska Clean Air Authority Requirements Applicable to OCS Sources,* August 21, 1992.

(B) (Reserved).

(3) California.

(i) State requirements.

(A) (Reserved).

(ii) Local requirements.

(A)–(D) (Reserved).

(E) *San Luis Obispo County Air Pollution Control District Requirements Applicable to OCS Sources,* August 21, 1992.

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources,* August 21, 1992.

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources,* August 21, 1992.

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources,* August 21, 1992.

(4) and (5) (Reserved).

(6) Florida.

(i) State requirements.

(A) *State of Florida Requirements Applicable to OCS Sources,* August 21, 1992.

(B) (Reserved).

(ii) Local requirements.

(A) (Reserved).

(7) through (16) (Reserved).

(17) North Carolina.

(i) State requirements.

(A) *State of North Carolina Air Pollution Control Requirements Applicable to OCS Sources,* August 21, 1992.

(B) (Reserved).

(ii) Local requirements.

(A) (Reserved).

(18) through (23) (Reserved).

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

This Appendix lists the titles of the state and local requirements that are contained within the documents incorporated by reference into 40 CFR Part 55.

Alaska

(a) State requirements.

(1) The following requirements are contained in *State of Alaska Requirements Applicable to OCS Sources,* August 21, 1992:

Alaska Administrative Code—Department of Environmental Conservation. The following sections of Title 18, Chapter 50:

18 AAC 50.020 Ambient Air Quality Standards (Effective 7/21/91)
18 AAC 50.030 Open Burning (Effective 10/30/83)
18 AAC 50.040 Incinerators (Effective 10/30/83)
18 AAC 50.050 Industrial Processes and Fuel Burning Equipment (Effective 5/11/91)
18 AAC 50.090 Ice Fog Limitations (Effective 5/26/72)
18 AAC 50.100 Marine Vessels (Effective 7/21/91)
18 AAC 50.110 Air Pollution Prohibited (Effective 5/26/72)
18 AAC 50.300 Permit to Operate (Effective 7/21/91)
18 AAC 50.310 Revocation or Suspension of Permit (Effective 5/4/80)
18 AAC 50.400 Application Review and Issuance of Permit to Operate (Effective 7/21/91)
18 AAC 50.500 Source Testing (Effective 6/2/88)
18 AAC 50.510 Ambient Analysis Methods (Effective 7/21/91)
18 AAC 50.520 Emission and Ambient Monitoring (Effective 7/21/91)
18 AAC 50.530 Circumvention (Effective 6/7/87)

18 AAC 50.620 Air Quality Control Plan; Volume II, Section IV: Paragraph F.—Facility Review Procedures; Paragraph C.—Application Review and Permit Development, only. (Effective 7/21/91)
18 AAC 50.900 Definitions (Effective 7/21/91)

(b) Local requirements.

(1) the following requirements are contained in *South Central Alaska Clean Air Authority Requirements Applicable to OCS Sources*, August 21, 1992:

15.30.030 Definitions
15.30.100 Registration and Notification, except E
15.30.110 Permit to Operate
15.30.120 Source Reports
15.30.130 Source Tests
15.35.040 Stationary Source Emissions—General Definitions
15.35.050 Stationary Source Emissions—Visible Emission Standards
15.35.060 Stationary Source Emissions—Emission Standards
15.35.080 Stationary Source Emissions—Circumvention
15.35.090 Stationary Source Emissions—Fugitive Emissions
15.35.100 Stationary Source Emissions—Open Burning

California

(a) State requirements.

(1) (Reserved).

(b) Local requirements.

(1)–(4) (Reserved).

(5) The following requirements are contained in *San Luis Obispo County Air Pollution Control District Requirements Applicable to OCS Sources*, August 21, 1992:

Rule 103 Conflicts Between District, State and Federal Rules (Adopted 8/6/76)
Rule 104 Action in Areas of High Concentration (Adopted 7/5/77)
Rule 105 Definitions (Adopted 11/5/91)
Rule 106 Standard Conditions (Adopted 8/6/76)
Rule 108 Severability (Adopted 11/13/84)
Rule 113 Continuous Emissions Monitoring, except F. (Adopted 7/5/77)
Rule 201 Equipment not Requiring a Permit, except A.1.b. (Adopted 11/5/91)
Rule 202 Permits, except A.4. and A.8. (Adopted 11/5/91)
Rule 203 Applications, except B. (Adopted 11/5/91)
Rule 204 Requirements, except B.2. and C. (Adopted 11/5/91)
Rule 209 Provision for Sampling and Testing Facilities (Adopted 11/5/91)
Rule 210 Periodic Inspection, Testing and Renewal of Permits to Operate (Adopted 11/5/91)
Rule 213 Calculations, except E.4. and F. (Adopted 11/5/91)
Rule 302 Schedule of Fees (Adopted 7/1/91)
Rule 305 Fees for Acid Deposition Research (Adopted 7/18/89)
Rule 401 Visible Emissions (Adopted 8/6/76)
Rule 403 Particulate Matter Emission Standards (Adopted 8/6/76)
Rule 404 Sulfur Compounds Emission Standards, Limitations and Prohibitions (Adopted 12/6/76)
Rule 405 Nitrogen Oxides Emission Standards, Limitations and Prohibitions (Adopted 11/13/84)
Rule 406 Carbon Monoxide Emission Standards, Limitations and Prohibitions (Adopted 11/14/84)
Rule 407 Organic Material Emission Standards, Limitations and Prohibitions (Adopted 1/10/89)
Rule 411 Surface Coating of Metal Parts and Products (Adopted 1/10/89)
Rule 416 Degreasing Operations (Adopted 6/18/79)
Rule 422 Refinery Process Turnarounds (Adopted 6/18/79)
Rule 501 General Burning Provisions (Adopted 1/10/89)
Rule 503 Incinerator Burning, except B.1.a. (Adopted 2/7/89)
Rule 601 New Source Performance Standards (Adopted 9/4/90)

(6) The following requirements are contained in *Santa Barbara County air Pollution Control District Requirements Applicable to OCS Sources*, August 21, 1992:

Rule 102 Definitions (Adopted 7/30/91)
Rule 103 Severability (Adopted 10/23/78)
Rule 201 Permits Required (Adopted 7/2/79)
Rule 202 Exemptions to Rule 201 (Adopted 7/30/91)
Rule 203 Transfer (Adopted 10/23/78)
Rule 204 Applications (Adopted 10/23/78)
Rule 205 Standards for Granting Applications (Adopted 7/30/91)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Applications (Adopted 10/23/78)
Rule 210 Fees (Adopted 5/7/91)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter—Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration—Southern Zone (Adopted 10/23/78)
Rule 306 Dust and fumes—Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate—Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/2/90)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems—Southern Zone (Adopted 10/23/78)
Rule 321 Control of Degreasing Operations (Adopted 7/10/90)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 2/20/90)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Storage of Petroleum and Petroleum Products (Adopted 7/11/89)
Rule 326 Effluent Oil Water Separators (Adopted 10/23/78)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 331 Refinery Valves and Flanges (Adopted 7/11/89)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 505 Breakdown Conditions Sections A., B.1., and D. only. (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 6/15/81)

(7) The following requirements are contained in *South Coast Air Quality Management District Requirements Applicable to OCS Sources*, August 21, 1992:

Rule 102 Definition of Terms (Adopted 11/4/88)
Rule 103 Definition of Geographical Areas (Adopted 1/9/76)
Rule 104 Reporting of Source Test Data and Analyses (Adopted 1/9/76)
Rule 107 Determination of Volatile Organic Compounds in Organic Material (Adopted 1/8/82)
Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 5/5/89)
Rule 201 Permit to Construct (Adopted 1/5/90)
Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
Rule 202 Temporary Permit to Operate (Adopted 5/7/76)
Rule 203 Permit to Operate (Adopted 1/5/90)
Rule 204 Permit Conditions (Adopted 1/4/85)
Rule 205 Expiration of Permits to Construct (Adopted 1/5/90)
Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
Rule 208 Permit for Open Burning (Adopted 1/5/90)
Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
Rule 210 Applications (Adopted 1/5/90)
Rule 212 Standards for Approving Permits (Adopted 6/28/90)
Rule 214 Denial of Permits (Adopted 1/5/90)
Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
Rule 218 Stack Monitoring (Adopted 8/7/81)
Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 6/3/88)
Rule 220 Exemption—Net Increase in Emissions (Adopted 8/7/81)
Rule 221 Plans (Adopted 1/4/85)
Rule 301 Permit Fees (Adopted 6/7/91)
Rule 304 Equipment, Materials and Ambient Air Analyses (Adopted 7/6/90)
Rule 304.1 Analyses Fees (Adopted 6/7/91)
Rule 305 Fees for Acid Deposition Research (Adopted 3/3/89)
Rule 306 Plan Fees (7/6/90)

Rule 401 Visible Emissions (Adopted 4/7/89)
Rule 403 Fugitive Dust (Adopted 5/7/76)
Rule 404 Particulate Matter—Concentration (Adopted 2/7/86)
Rule 405 Solid Particulate Matter—Weight (Adopted 2/7/86)
Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/2/82)
Rule 408 Circumvention (Adopted 5/7/76)
Rule 409 Combustion Contaminants (Adopted 8/7/81)
Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430 Breakdown Provisions, (a) and (e) only. (Adopted 5/5/78)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 5/4/90)
Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 5/4/90)
Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)
Rule 441 Research Operations (Adopted 5/7/76)
Rule 442 Usage of Solvents (Adopted 3/5/82)
Rule 444 Open Fires (Adopted 10/2/87)
Rule 463 Storage of Organic Liquids (Adopted 12/7/90)
Rule 465 Vacuum Producing Devices or Systems (Adopted 12/7/90)
Rule 468 Sulfur Recovery Units (Adopted 10/8/76)
Rule 473 Disposal of Solid and Liquid Wastes (5/7/76)
Rule 474 Fuel Burning Equipment—Oxides of Nitrogen (Adopted 12/4/81)
Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)
Rule 476 Steam Generating Equipment (Adopted 10/8/76)
Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77)
Addendum to Regulation IV
Rule 701 General (Adopted 7/9/82)
Rule 702 Definitions (Adopted 7/11/80)
Rule 704 Episode Declaration (Adopted 7/9/82)
Rule 707 Radio-Communication System (Adopted 7/11/80)
Rule 708 Plans (Adopted 7/9/82)
Rule 708.1 Stationary Sources Required to File Plans (Adopted 4/4/80)
Rule 708.2 Content of Stationary Source Curtailment Plans (Adopted 4/4/80)
Rule 708.4 Procedural Requirements for Plans (Adopted 7/11/80)
Rule 709 First Stage Episode Actions (Adopted 7/11/80)
Rule 710 Second Stage Episode Actions (Adopted 7/11/80)
Rule 711 Third Stage Episode Actions (Adopted 7/11/80)
Rule 712 Sulfate Episode Actions (Adopted 7/11/80)
Rule 715 Burning of Fossil Fuel on Episode Days (Adopted 8/24/77)
Regulation IX—New Source Performance Standards (Adopted 9/7/90)
Rule 1106 Marine Coating Operations (Adopted 12/7/90)
Rule 1107 Coating of Metal Parts and Products (Adopted 11/2/90)
Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/6/81)
Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)
Rule 1110.2 Emissions from Gaseous- and Liquid-Fueled Internal Combustion Engines (Adopted 9/7/90)
Rule 1113 Architectural Coatings (Adopted 12/7/90)
Rule 1116.1 Lightering Vessel Operations—Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 12/1/78)
Rule 1122 Solvent Cleaners (Degreasers) (Adopted 5/5/89)
Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)
Rule 1129 Aerosol Coatings (Adopted 11/2/90)
Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 8/4/89)
Rule 1140 Abrasive Blasting (Adopted 8/2/85)
Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)
Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 1/6/89)
Rule 1146.1 Emissions of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 10/5/90)
Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149 Storage Tank Degassing (Adopted 4/1/88)
Rule 1168 Control of Volatile Organic Compound Emissions from Adhesive Applications (Adopted 7/19/91)
Rule 1173 Fugitive Emissions of Volatile Organic Compounds (Adopted 12/7/90)
Rule 1176 Sumps and Wastewater Separators (Adopted 1/5/90)
Rule 1301 General (Adopted 6/28/90)
Rule 1302 Definitions (Adopted 6/28/90)
Rule 1303 Requirements (Adopted 5/3/91)
Rule 1304 Exemptions (Adopted 5/3/91)
Rule 1306 Emission Calculations (Adopted 5/3/91)
Rule 1313 Permits to Operate (Adopted 6/28/90)
Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 10/6/89)
Rule 1701 General (Adopted 1/6/89)
Rule 1702 Definitions (Adopted 1/6/89)
Rule 1703 PSD Analysis (Adopted 10/7/88)
Rule 1704 Exemptions (Adopted 1/6/89)
Rule 1706 Emission Calculations (Adopted 1/6/89)
Rule 1713 Source Obligation (Adopted 10/7/88)
Regulation XVII Appendix

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources,* August 21, 1992:

Rule 2 Definitions (Adopted 5/8/90)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 7/5/83)
Rule 11 Application Contents (Adopted 8/15/78)
Rule 12 Statement by Application Preparer (Adopted 6/16/87)
Rule 13 Statement by Applicant (Adopted 11/21/78)
Rule 14 Trial Test Runs (Adopted 5/23/72)
Rule 15 Permit Issuance (Adopted 7/5/83)
Rule 16 Permit Contents (Adopted 12/2/80)
Rule 18 Permit to Operate Application (Adopted 8/17/76)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 21 Expiration of Applications and Permits (Adopted 6/23/81)
Rule 23 Exemptions from Permit (Adopted 1/8/91)
Rule 24 Source Recordkeeping and Reporting (Adopted 11/21/78)
Rule 26 New Source Review (Adopted 2/26/85)
Rule 26.1 All New or Modified Major Stationary Sources (Adopted 11/19/85)
Rule 26.2 New or Modified Non-Major Sources (Adopted 11/19/85)
Rule 26.3 New or Modified Stationary Sources—Prevention of Significant Deterioration (PSD) (Adopted 11/19/85)
Rule 26.6 Air Quality Impact Analysis and Notification (Adopted 1/10/84)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 5/30/89)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions; Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Appendix II–A Information Required for Applications to the Air Pollution Control District
Appendix II–B Best Available Control Technology (BACT) Tables
Rule 42 Permit Fees (Adopted 6/19/90)
Rule 44 Exemption Evaluation Fee (Adopted 1/8/91)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter-Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter-Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 7/5/83)
Rule 56 Open Fires (Adopted 5/24/68)
Rule 57 Combustion Contaminants—Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment—Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 7/5/83)
Rule 66 Organic Solvents (Adopted 11/24/87)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 9/11/90)

Rule 71.1 Crude Oil Production and Separation (Adopted 10/4/88)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 9/11/90)
Rule 71.4 Petroleum Sumps, Pits, Ponds and Well Cellars (Adopted 10/4/88)
Rule 72 New Source Performance Standards (NSPS) (Adopted 6/19/90)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 9/5/89)
Rule 74.2 Architectural Coatings (Adopted 10/21/86)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 5/8/90)
Rule 74.6.1 Cold Cleaning Operations (Adopted 9/12/89)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 9/12/89)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 1/10/89)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 9/5/89)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 9/22/87)
Rule 74.11 Natural Gas-Fired Residential Water Heaters—Control of NO_x (Adopted 4/9/85)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 5/15/89)
Rule 74.15 Boilers, Steam Generators and Process Heaters (Adopted 3/28/89)
Rule 74.16 Oil field Drilling Operations (Adopted 1/8/91)
Rule 75 Circumvention (Adopted 11/27/78)
Appendix IV–A Soap Bubble Tests
Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Stack Monitoring (Adopted 6/4/91)
Rule 155 Plans (Adopted 11/20/79)
Rule 157 First Stage Episode Actions (Adopted 11/20/79)
Rule 158 Second Stage Episode Actions (Adopted 11/20/79)
Rule 159 Third Stage Episode Actions (Adopted 11/20/79)

Florida

(a) State requirements.

(1) The following requirements are contained in *State of Florida Requirements Applicable to OCS Sources,* August 21, 1992: Florida Administrative Code—Department of Environmental Regulation. The following sections of Chapter 17:

2.100 Definitions (Adopted 9/13/90)
2.200 Statement of Intent (Adopted 8/26/81)
2.210 Permits Required (Adopted 7/9/89)
2.215 Emission Estimates (Adopted 5/1/85)
2.240 Circumvention (Adopted 8/26/81)
2.250 Excess Emissions (Adopted 8/26/81)
2.260 Air Quality Models (Adopted 7/9/89)
2.270 Stack Height Policy (Adopted 10/20/86)
2.280 Severability (Adopted 8/26/81)
2.300 Ambient Air Quality Standards (Adopted 7/9/89)
2.310 Maximum Allowable Increases (Prevention of Significant Deterioration) (Adopted 7/13/90)
2.320 Air Pollution Episodes (Adopted 8/26/81)
2.330 Air Alert (Adopted 5/30/80)
2.340 Air Warning (Adopted 7/9/89)
2.350 Air Emergency (Adopted 5/30/88)
2.500 Prevention of Significant Deterioration (Adopted 7/13/90)
2.510 New Source Review for Nonattainment Areas (Adopted 8/30/89)
2.520 Sources Not Subject to Prevention of Significant Deterioration or Nonattainment Requirements (Adopted 7/9/89)
2.530 Source Reclassification (Adopted 1/12/82)
2.540 Source Specific New Source Review Requirements (Adopted 7/9/89)
2.600 Specific Source Emission Limiting and Performance Standards (Adopted 8/30/89)
2.610 General Particulate Emission Limiting Standards (Adopted 7/9/89)
2.620 General Pollutant Emission Limiting Standards, except (2). (Adopted 8/26/81)
2.630 Best Available Control Technology (BACT) (Adopted 5/1/85)
2.640 Lowest Achievable Emission Rate (LAER) (Adopted 8/26/81)
2.650 Reasonably Available Control Technology (RACT), except (2)(f) (Adopted 9/13/90)
2.660 Standards of Performance for New Stationary Sources (NSPS) (Adopted 12/18/89)
2.670 National Emission Standards for Hazardous Air Pollutants (Adopted 12/5/88)
2.700 Stationary Point Source Emission Test Procedures (Adopted 8/30/89)
2.710 Continuous Emission Monitoring Requirements (Adopted 8/30/89)
2.753 DER Ambient Test Methods (Adopted 5/1/85)
4.020 Definitions (Adopted 3/31/88)
4.021 Transferability of Definitions (Adopted 8/31/88)
4.030 General Prohibitions (Adopted 8/31/88)
4.040 Exemptions (Adopted 8/31/88)
4.050 Procedure To Obtain Permit; Application, except (4)(b) through (4)(j) and 4(n) (Adopted 5/30/91)
4.070 Standards for Issuing or Denying Permits; Issuance; Denial (Adopted 3/28/91)
4.080 Modification of Permit Conditions (Adopted 3/19/90)
4.090 Renewals (Adopted 3/19/90)
4.100 Suspension and Revocation (Adopted 8/31/88)
4.110 Financial Responsibility (Adopted 8/31/88)
4.120 Transfer of Permits (Adopted 3/19/90)
4.130 Plant Operations—Problems (Adopted 8/31/88)
4.160 Permit Conditions, except (16) and (17) (Adopted 10/4/89)
4.210 Construction Permits (Adopted 8/31/88)
4.220 Operation Permits for New Sources (Adopted 8/31/88)
4.520 Definitions (Adopted 7/11/90)
4.530 Procedures (Adopted 3/19/90)
4.540 General conditions for all General Permits (Adopted 8/31/88)
256.100 Declaration and Intent (Adopted 10/20/86)
256.200 Definitions (Adopted 10/20/86)
256.300 Prohibitions (Adopted 10/20/86)
256.600 Industrial, Commercial, Municipal and Research Open Burning (Adopted 8/26/87)
256.700 Open Burning Allowed (Adopted 11/23/88)

(b) Local requirements.

(1) [Reserved].

North Carolina

(a) State requirements.

(1) The following requirements are contained in *State of North Carolina Air Pollution Control Requirements Applicable to OCS Sources,* August 21, 1992: The following sections of Subchapters 2D and 2H:

2D.0101 Definitions (Adopted 12/1/89)
2D.0104 Adoption by Reference Updates (Adopted 10/1/89)
2D.0201 Classification of Air Pollution Sources (Adopted 7/1/84)
2D.0202 Registration of Air Pollution Sources (Adopted 6/1/85)
2D.0303 Emission Reduction Plans (Adopted 7/1/84)
2D.0304 Preplanned Abatement Program (Adopted 7/1/88)
2D.0305 Emission Reduction Plan; Alert Level (Adopted 7/1/84)
2D.0306 Emission Reduction Plan; Warning Level (Adopted 7/1/84)
2D.0307 Emission Reduction Plan; Emergency Level (Adopted 7/1/84)
2D.0401 Purpose (Adopted 10/1/89)
2D.0501 Compliance with Emission Control Standards (Adopted 10/1/89)
2D.0502 Purpose (Adopted 6/1/85)
2D.0503 Particulates from Fuel Burning Indirect Heat Exchanger (Adopted 6/1/85)
2D.0505 Control of Particulate from Incinerators (Adopted 7/1/87)
2D.0510 Particulates: Sand, Gravel and Crushed Stone Operations (Adopted 1/1/85)
2D.0511 Particulates, SO_2 from Lightweight Aggregate Processes (Adopted 10/1/89)
2D.0515 Particulates from Miscellaneous Industrial Processes (Adopted 1/1/85)
2D.0516 Sulfur Dioxide Emissions Combustion Sources (Adopted 10/1/89)
2D.0518 Miscellaneous Volatile Organic Compound Emissions (Adopted 2/1/83)
2D.0519 Control of Nitrogen Dioxide Emissions (Adopted 10/1/89)
2D.0520 Control and Prohibition of Open Burning (Adopted 1/1/85)
2D.0521 Control of Visible Emissions (Adopted 8/1/87)
2D.0530 Prevention of Significant Deterioration (Adopted 10/1/89)
2D.0531 Sources in Nonattainment Area (Adopted 12/1/89)
2D.0532 Sources Contributing to an Ambient Violation (Adopted 10/1/89)
2D.0533 Stack Height (Adopted 7/1/87)

2D.0535 Excess Emissions Reporting and Malfunctions, (a) and (f) only. (Adopted 5/1/90)
2D.0537 Control of Mercury Emissions (Adopted 6/1/85)
2D.0601 Purpose and Scope (Adopted 7/1/84)
2D.0602 Definitions (Adopted 7/1/84)
2D.0604 Sources Covered by Implementation Plan Requirements (Adopted 7/1/88)
2D.0606 Other Coal or Residual Oil Burners (Adopted 5/1/85)
2D.0607 Exceptions to Monitoring and Reporting (Adopted 7/1/84)
2D.0901 Definitions (Adopted 12/1/89)
2D.0902 Applicability (Adopted 5/1/90)
2D.0903 Recordkeeping, Reporting, Monitoring (Adopted 12/1/89)
2D.0906 Circumvention (Adopted 1/1/85)
2D.0912 General Provisions on Test Methods and Procedures (Adopted 12/1/89)
2D.0914 Determination of VOC Emission Control System Efficiency (Adopted 1/1/85)
2D.0925 Petroleum Liquid Storage (Adopted 12/1/89)
2D.0933 Petroleum Liquid Storage in External Floating Roof Tanks (Adopted 12/1/89)
2D.0939 Determination of Volatile Organic Compound Vapor Emissions (Adopted 7/1/88)
2D.1101 Purpose (Adopted 5/1/90)
2D.1102 Applicability (Adopted 5/1/90)
2D.1103 Definition (Adopted 5/1/90)
2D.1104 Toxic Air Pollutant Guidelines (Adopted 5/1/90)
2D.1105 Facility Reporting, Recordkeeping (Adopted 5/1/90)
2D.1106 Determination of Ambient Air Concentrations (Adopted 5/1/90)
2D.1107 Multiple Facilities (Adopted 5/1/90)
2D.1108 Multiple Pollutants (Adopted 5/1/90)
2H.0601 Purpose and Scope (Adopted 10/1/89)
2H.0602 Definitions (Adopted 5/1/90)
2H.0603 Applications (Adopted 12/1/89)
2H.0609 Permit Fees (Adopted 8/1/88)
2H.0610 Permit Requirements for Toxic Air Pollutants (Adopted 5/1/90)

(b) Local requirements.

(1) (Reserved).

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